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CONTENTS



(For list of Book Reviews, see second page of cover)

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# REVIEWS OF BOOKS



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The American
Political Science Review

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# THE BRITISH EMPIRE AND CLOSER UNION

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## I

Although British sentiment for several decades had been steadily growing more imperialistic, it was not until the outbreak of the war that the process was completed, and with dramatic suddenness. The "Little Englanders," already dwindling in numbers, were confounded by the immediate and practical manifestations of colonial loyalty of which England was glad to avail herself. The murmurings of the anti-imperialist ceased in the face of such expressions of empire good-will as that contained in the message of the Canadian ministry to the British government on August 2, 1914. "If unhappily war should ensue," ran the message, "the Canadian people will be united in a common resolve to put forth every effort and to make every sacrifice necessary to insure the integrity and to maintain the honor of our Empire."

However, notwithstanding the impetus given by the war to the doctrines of imperialism and militarism, the believer in the principles of internationalism cannot be denied a crumb of comfort from the same event. He clings to the hope that the world-wide war, through its very enormity, will actually serve to preach peace more effectively than any pacifist can possibly do,

and that international arbitration and simultaneous suppression of armaments among civilized peoples may therefore be hastened.

Already there is an increasing willingness to question the validity of the ideals of nationalism with its attendant race-instinct or patriotism. For a substitute creed many are turning to internationalism, vague and untried as most of its principles still are. This straw is being clutched at by many in the present crisis as the sole hope for the future. That the anarchy of conflicting nation-states must be superseded by a system of internationalism, in which peace and international rights will be enforced, is the message of this growing number of enthusiasts. Indeed a long step in the direction of an international union already seems to have been taken at a conference held in Paris in April, 1916. On this occasion, representatives of the allied powers met to consider such economic and commercial questions as the establishment of a joint-tariff system, the introduction of penny postage between the Allies, and the formation of an international patent office. It is true, to be sure, that the fundamental purpose of such a joint tariff system—post-bellum discrimination against Germany—does not make for world unity. However, it is to be hoped that such discrimination will not be permanent, but instead will disappear with the cooling of war-heated passions. Many cabinet ministers were among the delegates in attendance at the conference, which not inaptly may be designated a legislative parliament of France, Russia, England, Italy, Belgium, Serbia, Japan, and the self-governing British dominions. If the agreements growing out of this event stand the test of time, they will dispose effectively of the contention that dissimilar nations cannot act in harmony for their mutual advantage in matters international.

Much less pretentious than such a possible international union is the proposal so to reconstruct the British Empire as to insure to it greater unity and permanency. To even the cosmopolitan internationalist this plan can not be without its appeal. For, notwithstanding his ideal of a union of all mankind, based upon international coöperation, a binding body of international law, and upon a declining emphasis on national greatness, the inter-

nationalist may quite consistently concur in suggestions making for a more permanent organization of the empire. Indeed, by very reason of his principles he may logically welcome such action owing to the impression, more or less current, that a British imperial union may well serve as the working model if not the nucleus of a larger world union. There is little in the imperial union, when one considers the diversity of races, civilizations, and interests under the British flag, to differentiate it from a union of all mankind, save the difference in bulk. Whereas the federation of the world is yet but a glorious aspiration, imperial unity is within reach. It is not improbable, therefore, that the dawn of a world league would be hastened through the establishment of a more complete British union. This union might logically either precede or be synchronous with an alliance between the United States, the British Empire and France. Such a league, embracing not less than one-third of mankind, would surpass both in area and in population any other *natural* alliance at all probable under existing circumstances. That the Allies do not constitute a natural group will perhaps be readily conceded in the face of their widely differing systems of government and political traditions. By leaving the door open through which to welcome other members to the tripartite union, the interests of humanity as a whole would in no sense be abandoned.

It is necessary, of course, to declare with utmost haste that the foregoing is conditioned on the premise that motives of national aggrandisement and national enmity must be subordinated to the desire for the larger benefits growing out of peace and international good-will.

Doubtless it will be stoutly maintained that a British imperial union would in its very nature involve motives of aggrandisement, and a limitation on democracy and freedom. In rejoinder it is but necessary to allude to the political structure already in existence, through which the natural impulses of the colonial peoples toward national identity are harmonized with the continuance of the British connection. The unique political status of the dominions, so highly prized by them, is the fruit of a long and oftentimes painful process of evolution. Within the past

two decades, these states, bursting the colonial chrysalis, have emerged into nationhood. Indeed, at the colonial conference of 1907, the secretary for the colonies concurred in the principle laid down by the British prime minister that the "essence of the imperial connection" is to be found in "the freedom and independence of the different governments which are a part of the British Empire." The support of the leaders of India, not less than the loyalty of the Indian regiments, serves also as testimony to the character of British rule. Alike among distinguished Indians and British statesmen the hope is gaining ground that the future contains for India a democratic political system not wholly unlike that already enjoyed by the self-governing dominions. In the light of present conditions, therefore, it would seem entirely appropriate to condition the formation of a closer imperial union upon principles of political democracy.

Yet, despite its virtues, the present political structure of the empire has been deemed unsatisfactory. Having obtained extensive powers, the dominions have been tending toward the development of separate external policies. Canada negotiates, for example, with foreign countries for reciprocity agreements, of which practice notable illustrations are found in the Franco-Canadian commercial treaty of 1907, and in the ill-starred reciprocity agreement of 1911 with the United States. Canada, also in 1907, sent an official representative to Japan to negotiate a treaty relative to oriental immigration. The dominions frame their own tariffs, determine their immigration policies, and formulate their military and naval programs with a view primarily of serving their own individual interests. The welfare of the empire as a whole has been a matter of secondary importance. In all this Great Britain has acquiesced, not having the power to do otherwise, owing to the right of autonomy, which, having been conferred upon the dominions, has been in no danger of falling into disuse. To the advocate of closer imperial union the inevitable result of this process must eventually be the disintegration of the empire.

Against the continuance of the *laissez faire* policy of accepting conditions as they arise, many have been raising their voices.

Mr. H. M. Hyndman, for example, in speaking of the British people, has declared that "we are rubbing along in apathetic fashion as our fathers have done before us and imagine that if we can manage our business and handle our disputes, misdemeanors, and crimes without anything in the shape of a codified law, we can equally well conduct our polity without anything approaching to a constitution. We are quite content to drift alike in calm and storm. Those who are wise enough or fidgety enough to ask for a compass, and to request that we should set a definite course are regarded, until the crash comes, as mere wiseacres and meddlers who do better to attend to their own matters alone."

## II

Accordingly the imperialist urges the establishment of a more complete and permanent union of the empire. He would meet the demands of the dominions for a complete national life and for a voice in the decision of their destinies by admitting them to full partnership with Great Britain itself in the control of imperial policies of common interest to all parts of the empire. Few probably will deny that the dominions have abundantly won the right—as they have shared the burden—to share authority in the councils of the empire. Near the close of the year 1915, Sir Robert Borden, the Canadian premier, in alluding to this issue declared that "our empire seems to us something greater than it was a year ago. When mighty armies from the dominions and dependencies arrayed themselves in its battle-line, a new and impressive epoch in its history was marked. It is realized that the great policies and questions which concern and govern the issues of empire peace and war can not in future be assumed by the people of the British Islands alone."

Imperialists, however, are divided into two schools of thought. While agreeing over the end to be achieved, they differ over the means to be employed. Their common purpose was concisely stated by the late Joseph Chamberlain, who at one time declared that "an effort is to be made to find, and having been found to pursue, a common policy by which the development of each unit

of the empire may be made to serve the interests of the whole, and the strength of the whole to safeguard and promote the development of each." In the phrase of Lord Milner the ultimate ideal for the empire is that of a "union in which the several states, each entirely independent in its separate affairs, should all coöperate for common purposes on the basis of absolute unqualified equality of status."

Of the two solutions proposed to attain this end, imperial federation has the advantage of priority and number of adherents. The ideal of a Britannic alliance, too recent to have obtained an impressive following, is deemed by its advocates, however, to be more in harmony with sentiment current in the empire. Fundamentally, the difference between the two is one of degree rather than of principle. In the scheme of federation, a federal parliament would be created, made up of representatives of Great Britain and the dominions, with an executive responsible to it. All matters pertaining to the empire at large, such as defense, commerce and immigration, would be subject to control by this imperial body in peace as well as in war. The conception of the Britannic alliance, on the other hand, makes no call for any act of constitution-making and makes no demand for a new imperial government. It would involve the process of deliberately continuing developments already well begun, supplemented by a further elaboration of the imperial conference to serve as a central organization.

By both schools the principle of imperial preference is regarded as an essential to success. The federationist declares that it is almost unthinkable that imperial unity should be achieved and permanently secured save through the help of imperial preferential tariff rates. It was the assertion of Mr. Chamberlain that "a common trade policy is the indispensable basis of a common imperial policy." At the same time, Mr. Jebb, a prominent advocate of a Britannic alliance, has pointed out that an alliance could not succeed unless it were reënforced with "a network of economic interests between the allied peoples." Through such conditions the belief would grow that "the imperial connection was a national asset rather than an incubus or a risk." All seem

agreed that if the British Empire is to hold together as a great federation of free democracies it is essential that there should be an increasing solidarity of thought and feeling on such questions of policy as trade and defense which concern all alike. It is felt therefore that cleavage must follow if any member of the federation should indefinitely pursue a policy which the others may regard as injurious.

In the light of the foregoing it may appear strange that the great obstacle in the path of imperial preference has been England's continued adherence to the policy of free trade. For decades, and with growing insistence, the dominions have been urging the principle of imperial preference upon Great Britain. Although these suggestions met with indifference at first and seemed fruitless, Sir Wilfrid Laurier was inspired, in 1897, with the idea of giving effect to the principle in Canada without waiting for British reciprocation. Canada's example was followed by the other dominions, which fact combined with the vigorous campaign waged by Mr. Chamberlain and others awakened an interest in Britain in the cause of colonial preference. It was after the disappointing results of the colonial conference of 1902 that many began to realize that, for practical purposes, there was a fundamental defect in the traditional conception of colonial "loyalty" to England, and of dutiful acquiescence in British ascendency. This opportunity, so favorable to a constructively Liberal treatment of the Britannic question, was taken advantage of, however, by certain Conservative leaders, who began discussing imperial questions of trade and defense in terms of partnership rather than ascendency and of equal alliance rather than colonial dependence. And yet the preference so long desired was not forthcoming.

Notwithstanding the absence of British reciprocation the dominions have continued their policy of preference. The original concession by Canada in 1897 amounted to a reduction of $12\frac{1}{2}$ per cent in the customs duties in favor of Great Britain. Since 1900, the average of rates levied on British goods has normally been $33\frac{1}{3}$ per cent lower than the general average of duties. Both New Zealand and South Africa adopted the principle of

preference in 1903, and similar action was taken by Australia in 1908. That the preferential rates represent a genuine concession will be obvious from a comparison of actual duties. In the year 1912, the average rate of duty levied in New Zealand on British goods, subject to preference, was 13 per cent, whereas the same goods if of foreign origin would have been charged a rate of 25 per cent. The corresponding rates for Australia were 13 and 18 per cent respectively, and for South Africa 10 and 13 per cent. Considered as a reduction from the general rates levied on foreign goods, the British preference represented an abatement of approximately 50 per cent in the case of New Zealand, 30 per cent in Australia, and nearly 25 per cent in South Africa.

## III

It is significant that the war already has altered the Englishman's traditional attitude toward protection and preference. Owing to political and military exigencies, accentuated by national enmities, public opinion is undergoing a radical change. The problem of securing an imperial self-sufficiency is looming large on the British horizon, inasmuch as insular self-sufficiency is impossible. At the same time a quickened feeling of imperial solidarity has not unnaturally arisen as a result of empire coöperation on the battlefields of Europe.

Already definite proposals are being discussed for particular restrictions and preferences. At the notable meeting of the British Association of Chambers of Commerce held in London in March, 1916, resolutions were adopted which may have far-reaching effects on the economic future not only of the empire but of the world. Among the 1000 or more delegates to this conference were representatives of every considerable commercial and industrial organization in the British Isles, and of similar bodies in the outlying parts of the empire. The British government was represented by Reginald McKenna, chancellor of the exchequer, and there were official representatives present from many of the colonies. Among the resolutions adopted, two reflect clearly a sentiment for a complete readjustment of the

British commercial policy. The first one, unanimously adopted, declared that "the experience of the war has shown that the strength and safety of the British nation in time of national peril lie in the possession by this nation of the power to produce its requirements from its own soil and its own factories rather than in the possession of values which may be exported and exchanged for products and manufactures of foreign countries." After some opposition on the part of adherents of free trade, a second resolution was adopted with practical unanimity. It provided: "First, for preferential trading relations between all British countries; second, for reciprocal trading relations between the British Empire and allied countries; third, for favorable treatment of neutral countries; fourth, for restrictions by tariffs and otherwise on all trade relations with enemy countries, so as to make it impossible to return to pre-war conditions."

In his address before the conference, however, Mr. McKenna would not commit the administration to any radical departure from the national policy of free trade. Again, early in April, in introducing the war budget, Mr. McKenna reverted to the question as to whether tariff duties might be used for controlling and directing trade along desired lines. "Any attempt in this direction," he declared, "would be met by insuperable preliminary difficulties in finding the necessary machinery to give effect to such proposals."

Still the significant fact remains that there is a growing public sentiment in favor of a change in fiscal policy. Even in Manchester, the great stronghold of the principles of Adam Smith and Richard Cobden, there is evidence of changing opinion, as illustrated in the sharp opposition which developed against a resolution presented by the board of directors to the Manchester chamber of commerce at its annual meeting in February, 1916. The directors submitted a statement affirming the adherence of the chamber to the policy of free trade and its resistance to protective tariffs, on the ground that tariffs tend to bolster up inefficient industries at the expense of the community. This resolution was repudiated by the meeting by an overwhelming majority, and in opposition to it two counter-propositions were put

forward. The less drastic and radical of the two declared that Germany and Austria should not be entitled, after the war, to the same facilities for trading with the United Kingdom as those granted to allied and neutral nations, and that for that object the chamber would be prepared to support, if necessary, a tariff on German and Austrian goods. Many of the hitherto strongest supporters of free trade are confessing that the perspective has been entirely altered by the circumstances growing out of the war, and that Germany cannot be permitted to enjoy hereafter the same commercial opportunities in the British Isles that she possessed before the war. It is becoming increasingly clear that there is small solicitude for the preservation, as a sacred institution, of the traditional free trade policy.

Debates in parliament also show unmistakably the trend of public opinion. Perhaps the most important evidence of a change in the national attitude lies in the willingness of the British government to coöperate along tariff lines with its allies as indicated in the conference held in Paris, to which reference has already been made. "Russia made the first public proposals," declares Mr. Brailsford, "for a prolongation of the present war of trenches and torpedoes into a new war of tariffs and boycotts; France took the initiative in calling the conference; we in England have followed their lead." While England has not formally abandoned free trade, the decision has been made at least in principle through the very willingness to act after the war in economic alliance with France and Russia, since, in order to coöperate in such manner the British fiscal system must in a degree become protectionist. In the opinion of Professor Nicholson, of Edinburgh, the British people "are not likely to look again with complacency on the growth of German navigation and the expulsion of British ships from old trade routes. Some revival of our old navigation policy seems very likely."

Doubtless the revival will be justified on the same grounds on which Adam Smith based his approval of the old navigation acts. While admitting that these regulations were not favorable to the growth of the maximum of national wealth, and that they were the result of national rivalry against the Dutch, he

nevertheless commended them as the wisest piece of British commercial legislation. His conclusion that "Defense is of more importance than opulence" has been revived and is being quoted extensively.

It is obvious on reflection that if a change in the British fiscal policy be effected, the event will have profound and far-reaching results throughout the civilized world. British free trade has come to be looked upon almost as an immemorial institution possessing a permanent quality. More than that, it has been invested by many in all lands with a moral quality as well. It has been held up as a closer approach to an ideal fiscal system than any other yet devised. Recognizing that it is implicit in the very theory of tariff protection that certain classes in the country must carry an economic burden to the advantage of others, which would not be the case if trade were free, it has been felt that a greater measure of tariff justice was attained in Great Britain than in protectionist countries. Yet in the present juncture we discover that what had been conceived to be permanent gives evidence of impermanence. In the present crisis even the champions of free trade are being swept from their long established position, and are being brought to admit that there are other national ends than the pursuit of wealth which must be safeguarded. While clinging to their convictions as to the economic soundness of free trade principles, they admit as never before that a free trade policy may fail to serve the ends of national security and military preparedness.

The abandonment of free trade by England will be looked upon as a genuine step backwards by believers in internationalism. Maintaining that tariffs constitute an important source of international friction, they deduce the conclusion that the era of internationalism can not well be ushered in save through the erasure of tariff barriers. If, therefore, England, the one great exemplar of free trade principles, is now led to repudiate her fiscal policy it is feared that the realization of their hopes will be indefinitely postponed. It will be evident on reflection that this is not an idle fear. In the event of adoption by England of a protectionist policy, the underlying reason for such change

will undoubtedly be the desire to render herself and the empire more nearly self-sufficient. An accompanying motive will be the desire concurrently to retard the economic recovery of Germany. To be sure, this motive, at present much exploited, will lose much of its virulence when the calm of peace returns and public opinion reverts to its customary channel. The effect, however, of a British policy of restriction applied to imports from Germany will not be to hasten the obliteration of the present animosities. It should also be borne in mind that a return to protection will be accompanied inevitably by the growth of vested interests which, when once brought into existence, develop a most surprising tenacity of life.

Yet, in the face of all these conditions, the hope remains that from the recent economic conferences in Paris, with their proposed joint tariff system for the Allies, there may emerge the ultimate solution of the world problem. If, when the time of settlement of the present conflict arrives, the Allies are able to point out to Germany that their military and naval unity is unbroken and that they constitute a tariff unit as well, two alternative courses will be open to them. To Germany's question as to what they will take to open their markets there will be two answers. One of them, as pictured by Mr. Brailsford, would be that "we do not mean on any terms to open that market; our central purpose is to break your power and therefore your trade." The other answer would be that "we will open our markets, we will even allow you reasonable facilities for economic expansion, but we insist in return on certain concessions to the principle of nationality, and on certain guaranties for an enduring peace." Except in the event of a miracle bringing an overwhelming victory, the Allies must choose, it would seem, between these alternatives. We are reminded by Mr. Brailsford that "if they decide to build the settlement on the basis of a trade war, they must perforce lighten their cargo of ideals." A program of economic reprisal carried beyond a certain point would be as suicidal as one of military reprisal. Accordingly a policy of commercial reprisal undertaken at the end of the war should show "a constructive and healing rather than a negative

and punitive object." The commercial policy of the Allies toward Germany should not be formulated with the ultimate object of perpetuating and intensifying a feud. It should, on the contrary, aim to reach an understanding as to the formation of an international system into which Germany could ultimately enter as an equal.

## IV

Notwithstanding England's adherence for seven decades to the policy of free trade, the principle of colonial preference was for centuries a feature of the British fiscal system. From the beginning of British colonial enterprise until the free trade era of 1846, preference in one form or another was an accepted principle of the imperial policy of England. The first tariff preferences were granted to the colonies as long ago as the reign of James I. With the progress of the free trade movement, however, the old preferences were abolished contrary to the wishes of the colonies. This fact is brought out in the correspondence between Mr. Gladstone, when colonial secretary in Sir Robert Peel's administration in 1846, and Lord Cathcart, then governor-general of the provinces of Canada. Lord Cathcart urged the continuance of the preferences on the ground that their withdrawal would seriously interfere with Canadian commerce with the parent state. Mr. Gladstone, however, defended the policy of the administration. The last of the colonial preferences were abandoned in 1860.

It is significant that the present-day imperialist concurs in the opinion advanced nearly eight decades ago by Richard Cobden, an early champion of cosmopolitanism, that a free trade policy must result eventually in the dissolution of the empire. In the course of a letter written in 1842, he declared that free trade would "gradually and imperceptibly loose the bands which unite our colonies to us."

It is perhaps not strange, therefore, that in its modern form the policy of preference is one aspect of a general movement toward the consolidation of the empire. The desire for the readoption of preference, in a form adapted to modern con-

ditions and arranged on a reciprocal basis, has found formal expression at the several conferences held at intervals since 1887 between British and colonial statesmen. Indeed, even before the first conference in 1887, Canadian leaders had repeatedly urged upon British authorities the desirability of reciprocal tariff arrangements within the empire. It has been the expressed aim of every Canadian ministry which has held office since the confederation of the provinces in 1867 to remove obstacles in the way of building up the commerce of the empire and to adopt a policy of mutual preference. In 1879, for example, Sir John Macdonald, then premier of Canada, with two of his principal colleagues, Sir Leonard Tilley and Sir Charles Tupper, actually made "a proposal for a reciprocity treaty with England" while on a visit in London. They found, however, in the phrase of Sir John Macdonald, that "no English statesman has yet mustered courage to take up the question." Not less insistently has the movement for preference been urged by statesmen of the other dominions. The attitude of Australasia was revealed at the conference of 1887 in the speeches of Sir Henry Parkes, Mr. Deakin, and Sir Samuel Griffith. In the judgment of Mr. Deakin the preference proposal constituted "one of the best and one of the few means of drawing closer the bonds of unity and increasing the solidarity of the empire." With such views, Mr. Hofmeyr and other representatives of South Africa have been in hearty agreement. Cecil Rhodes, also an ardent advocate of preference, urged, in a communication to Sir John Macdonald in 1891, a united effort in behalf of a system of preferential trade within the empire.

Such views, however, have not been held exclusively by dominion statesmen. Lord Milner and Mr. Balfour have advanced the cause of preference, so vigorously championed by Mr. Chamberlain. Mr. Balfour, speaking at Haddington in October, 1911, declared that "the disintegrating force of tariffs must in no unduly extended period have fatal effects upon the unity of the British Empire," unless some administration, recognizing the possibilities and dangers of the situation, succeeds in bringing the "colonies into a commercial system as well as into a system of defense."

Lord Milner has maintained that the root idea underlying preference is that "the scattered communities, which own allegiance to the British crown, should regard and treat one another not as strangers but as kinsmen; that, while each thinks first of its own interests, it should think next of the interests of the family, and of the rest of the world only after the family."

Colonial ministers have indicated the general lines upon which they are prepared to move toward inter-imperial reciprocity. They stand opposed to any proposal to establish free trade within the empire, or a uniform tariff throughout the empire. However desirable free trade within the empire may be from many points of view, it is at the same time impracticable owing to the necessity which would arise in the dominions of finding alternative sources of revenue. It was pointed out at the colonial conference of 1907 by Sir Wilfrid Laurier, Mr. Deakin and others that according to the then latest revenue returns, Canada was raising over half of her total revenue through the customs, while in the other dominions customs receipts formed from one-fifth to one-third of the total revenues. Similarly, a uniform tariff policy for the empire has been deemed impracticable inasmuch as "no colony would ever surrender the right to control its fiscal policy." Sir Wilfrid Laurier has declared that "nothing could be more detrimental to the existence of the British Empire than to force upon any part of it, even for the general good, a system which would be detrimental locally or might be considered to be detrimental locally." For these reasons, the imperial *zollverein* idea broached by Mr. Chamberlain in 1896 was abandoned in favor of a system of imperial preferences.

Before the outbreak of the European war, all the self-governing portions of the empire, excepting alone the United Kingdom and Newfoundland, had built up a network of inter-imperial preferential arrangements. These two states were deterred by considerations of foreign trade. For example, Newfoundland, intent upon the American market for her staple export, fish, felt obliged to refrain from a policy which, however congenial to her Britannic sentiment, might prove inimical to her trade with the United States. While each of the other dominions had organ-

ized its tariff policy to meet its own economic needs, it had, at the same time, given an imperial sanction to its policy by granting to other parts of the empire as large a measure of trade advantages over foreign countries as was consistent with its own economic development.

The unwillingness of the United Kingdom to reciprocate the offers of preference made by the dominions has been based on the fact that the initiation of any scheme of reciprocal preference by Britain would necessarily involve the recasting of the British tariff on general tariff reform lines. Accordingly the proposed ficsal changes have consistently been rejected by the Liberal government. However, the Liberal statesmen have constantly asserted that there were alternative methods of bringing the empire together which involved no change in the traditional trade policy. Thus at the colonial conference of 1909, Mr. Asquith, speaking on the preferential trade resolution, stated that while he "could not recommend anything in the nature of colonial preference by the manipulation of tariffs," there were many other ways in which it was not only "the interest but the duty of the imperial parliament to promote the commercial interests of the rest of the empire." In his speech on the same resolution, Mr. Lloyd-George declared that "the question of preferential tariffs looms so large on the political horizon that its friends may lose their sense of proportion, and think that every alternative proposition is too insignificant to waste time and thought upon."

Yet when the Liberal ministers attempted to apply their alternative proposals they found their path beset with difficulties. In the main their suggestions were found to be either too difficult of attainment, as for instance the scheme of the All-Red route of empire communication, or unacceptable to the dominions. The Fabian Society likewise set forth as its alternative to the policy of preference the creation of trading fleets to "ply between the provinces of the empire, and to carry empire goods and passengers, either free or at charges far enough below cost, to British Australasia and Canada." Mr. Bernard Shaw, who was entrusted with the task of drafting these suggestions for

the Fabian Society, declared that if the counsels of these alternative proposals were carried into effect "we shall not need to trouble about such makeshifts as tariffs."

To accuse the Liberal party of a lack of vision or of interest in the future of the empire is to gloss over the work of the recent imperial conferences and to base the indictment solely on the unwillingness to adopt the principle of tariff reform and imperial preference. From this principle the Liberals continued to dissent on the grounds that its adoption would involve the abrogation of many existent British commercial treaties with foreign countries, and that it would revive the practice of taxing the food of the British public.

While arguing that to adopt imperial reciprocity would cost the United Kingdom too dear, Liberal leaders have acknowledged the commercial benefits derived through preferential rates in the markets of the dominions. Mr. Lloyd-George, in admitting the beneficial effect of preference, has declared that "the Canadian preferential tariff has produced a marked effect upon our export trade to Canada," and that like results were to be expected from the establishment of preference in the sister dominions. "It is certainly to our mutual advantage," he added, "that everything within reason should be done to promote commercial intercourse between Britain and the colonies." At the same time the free trader has felt that it is a question whether the United Kingdom can afford to disturb its vast trade with foreign countries in order to promote a possible advance in her colonial trade, which is so much less. Thus he points out that normally one-third only of British exports go to British possessions. Of imports into the United Kingdom, the empire has supplied rather less than one-fourth during the past half century. We are further reminded by the Liberals that Britain has enjoyed most-favored-nation treatment from foreign nations—that is to say, their most favorable rates. If, under these circumstances, England were to establish preferential trading with her colonies, thus creating maximum and minimum tariffs, she doubtless would deprive herself of her most-favored-nation treatment in foreign markets. This, however, is debatable, inasmuch as imperial

tariff arrangements may legitimately be regarded as a matter of domestic concern.

Nevertheless the imperialist still continued to urge the adoption of preference on the ground that if British statesmen failed to act, the differences in policy of the several governments within the empire would be accentuated; that the dominions would be more inclined than ever to exercise the power of negotiating treaties in which their interests might not be slighted. In the budget speech of Mr. W. S. Fielding, the finance minister, delivered in the Canadian house of commons in April, 1903, there is a significant passage bearing on this question. "Putting aside other considerations," declared Mr. Fielding, "if the British government and people do not show any appreciation of the value of the preference, then, so far as the British government and people are concerned, they can not complain if we see fit to modify or change that preferential tariff." Reference already has been made to the independent negotiations on the part of Canada which led to the Franco-Canadian treaty of 1907, an event which will not be without its influence on future tariff transactions by the dominions. It is not inconceivable, therefore, that an extensive and complicated network of commercial treaties might arise which would prove inimical to imperial unity by reducing the preference enjoyed by the United Kingdom in the markets of the dominions and by setting up an extensive series of discriminations by foreign countries in favor of the dominions as against the United Kingdom.

To the assertion that the United Kingdom is not a tariff state and that, for that reason, it would have to undergo a complete overturn of policy in order to adopt preference, the imperialist may legitimately make reply that the British people have for years been paying customs duties on their tea, tobacco, spirits, and sugar. Thus in the year ended March 31, 1912, the revenue derived from customs duties levied on the imports of these four classes of commodities amounted to $150,000,000. The per capita burden of customs taxation borne by the inhabitant of the British Isles has been normally not less than that of the American, notwithstanding the avowedly protectionist character

of the American tariff system. To be sure the British customs duties were arranged in accordance with the strictest tenets of the Cobdenite doctrine.

Although he proposed his system of imperial preference in the interest chiefly of empire unity and of the empire producer, Mr. Chamberlain did not overlook in his program the welfare of the British consumer. It will be recalled that Mr. Chamberlain, in his Glasgow speech of October 6, 1903, urged the reduction of several of the existent customs rates in order to offset the proposed duties. He wished to take off three-fourths of the duty on tea, one-half of the duty on sugar, and to effect a corresponding reduction on cocoa and coffee. At the same time, he proposed the placing of a duty on foreign wheat not to exceed six cents per bushel, and a tax of about 5 per cent on foreign meats and dairy produce. Importation of these products from the British dominions was to be duty free. A substantial preference was also proposed on colonial wines.

Underlying the entire tariff controversy, however, is the question as to how far the distinction is valid between economic and political considerations. It is a commonplace that the free trader has concentrated his attention on the growth of wealth on the assumption that with the increase of national wealth the integrity and welfare of the nation will automatically be cared for. The tariff reformer on the other hand maintains that while seeking the greatest measure of economic welfare the wider political considerations must not be neglected. He would consider the economic as but one of the several aspects of national life. He holds that economic conditions and political vigor react upon one another. "If we deliberately accept a one-sided economic development, we must be at pains," declares Professor Cunningham "to rectify the particular political weakness that is likely to ensue." Therefore, although the imperialist would perhaps admit that the adoption of protection and of imperial preference might carry with it some economic sacrifice, he nevertheless supports strongly such a policy on the ground that it would lead to greater imperial solidarity and to a more permanent basis of empire coöperation.

# THE FREQUENCY AND DURATION OF PARLIAMENTS

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When the British parliament passed a vote extending the life of the existing house of commons, whose duration would otherwise have terminated in January, 1916, their action attracted little attention and aroused but slight opposition. The forces of the empire, engaged in a desperate war, must not be dissipated by an appeal to the people, with the consequent evils of electioneering. Yet to the student of politics this action has a profound interest. One of the cardinal features of the legislation of 1911 had been the quinquennial duration of parliament—a provision which, as the debates show, was essential to the whole compromise. Yet in an unforeseen crisis, the legislature by its own resolution could provide an extension of its life, and thus postpone the date of accountability to the people. No political measure could furnish so striking a test of the flexibility of the British system, its adaptibility to emergencies, and its reliance upon a practically omnipotent legislature.

In this paper we shall trace the principal statutes which limit the parliamentary term and the intervals between parliamentary sessions. There are five such laws, each bearing a date full of significance in English constitutional history. The first three statutes, passed in 1641, 1664, and 1694, were triennial acts, though in different senses; the fourth statute, passed in 1716, was the familiar septennial act under which parliaments were so long regulated; the last permanent legislation on the subject was the parliament act of 1911 fixing a five-year maximum duration, and it still remains law though temporarily suspended in 1916.

A search of early English law reveals an ancient liking for annual parliaments. By a statute of 1330 it was provided "that

a Parliament shall be holden every year once, and more often if need be."[1] The same provision was reënacted in 1362. Although these laws were not strictly enforced, yet they served to establish a tradition in favor of frequent parliaments, and in the debates concerning the later acts, as well as in the statutes themselves, we find frequent reference to the "ancient laws and customs."[2] Many an English statute has been roused to life after lying dormant for centuries, and many laws which have long been dead letters may be used as potent arguments in a time of heated discussion. It was so with regard to the old ineffective laws concerning the frequency of parliaments; hence they deserve in this study at least a passing notice.

To explain the unusual provisions of the triennial act of 1641, we must recall the situation confronting the king and the two houses when the Long Parliament began its remarkable career.[3] The significant thing was not merely that royal abuses impossible to English forbearance had gone unchecked during the eleven years of personal rule on the part of Charles I; not merely that ship money, forced loans, and other preposterous schemes had displaced constitutional taxation; that the church establishment under the absolutist Laud was confronting English individualism and the growing religious sense with the menace of uniformity and the exaltation of the formalities of worship; that foreign affairs had been bungled, while Scotland and Ireland had been bitterly antagonized. The important thing was that in the mind of the average parliamentarian these outrages were asso-

[1] 4 Ed. III, c. 14. The quotation comprises nearly the entire statute.

[2] 36 Ed. III, c. 10.

[3] The Short Parliament, which met in April, 1640, had been abruptly dissolved after three weeks of bickering with the king over grievances. In a lengthy declaration justifying the dissolution, the king complained of the "undutiful and seditious carriage" of the parliamentary leaders, denounced their manner of bargaining and contracting for the remedy of grievances by refusing supplies, and expressed a deep repugnance towards their insistent demands for reducing the revenues and curtailing the prerogatives of the crown. This speech of the king serves as a fair statement of the vital issue between him and the parliament. *Parliamentary Debates*, II, p. 573.

ciated with a long intermission of parliament.[4] Over and above the measures of specific reform, such as the acts denying the royal power to levy tunnage and poundage, abolishing the court of the star chamber and the high commission, forbidding ship money, restricting the royal forests and doing away with the distraint of knighthood, there was a demand for a general measure which would still further tie the king's hands by preventing the recurrence of a like season of unrepressed royal control. It was exactly with this purpose in view that the triennial act, designed to insure the automatic meeting of parliament at stated times, independently of the king's will, was passed.

This act "for the preventing of inconveniences happening by the long intermission of parliaments"[5] recited in the preamble that by the "laws of the realm"[6] parliament ought to be held once a year for the redress of grievances; that the appointment of the time and place for these sessions "hath always belonged as it ought to His Majesty and his royal progenitors," and that mischiefs result from the infrequent holding of parliaments. To secure frequent sessions rigorous measures were accordingly prescribed.

If, by prorogation, adjournment, or dissolution, parliament should fail to meet before September 10 of the third year after the close of any session, then the lord chancellor and the lord keeper of the seal were required to issue the necessary writs of election to the boroughs, cities, counties, etc., "without any further warrant or direction from His Majesty, his heirs, or suc-

[4] As to the English abhorrence for an intermission of parliament, we may note the practice by which the same royal proclamation dissolves one parliament and summons its successor, the king, with the advice of his ministers, determining the dates of the dissolution and the next assembling. On this point Frederick Harrison writes: "The mediaeval rules about dissolutions and elections, with the obsolete jealousy of the crown which forces both into one royal proclamation, cause nothing but trouble and serve no useful end. The superstition that the British constitution, like nature, 'abhors a vacuum,' and insists on the formula —*Le Parlement est mort—Vive le Parlement!*—is hardly worthy of the twentieth century." *Realities and Ideals*, p. 259.

[5] The act is dated February 15, 1641. *Statutes of the Realm*, V. 54; 16 Car. I, c. 1.

[6] The reference here is to the acts of Edward III's reign, above mentioned.

cessors." These officers were to promise on oath to issue the writs. A failure to do so, besides "incurring the grievous sin of perjury," carried with it the penalty of removal from office and such other punishment as parliament might inflict.

In case the lord chancellor and the lord keeper should fail to issue the writs, then this function might be performed by any twelve peers meeting in the old palace of Westminster, in which case the writs should be "attested under the hand and seals of twelve or more of the said peers." The clerks of the petty bag and all other clerks whose duty it was to prepare election writs were required under penalty to do so at the command of the lords so assembled. Writs so prepared were to be of equal force with those issued under the great seal of England, and messengers were required under penalty to deliver the writs as directed.

In the event of the failure of the peers to issue the summons, then the sheriffs were to proceed with the elections, and finally as if to cover every human contingency, the act provided that if the sheriffs should fail to call the elections, then the freeholders of the counties, the masters and scholars of the universities, and the citizens and others having suffrage rights should proceed to hold elections as usual without further warrant, and their returns should be accepted as official.

No parliament was to be dissolved or prorogued within fifty days of its meeting without the consent of the king and the two houses. Neither house was to be adjourned within fifty days without its consent. All the parliaments assembled under this act and all members thereof were to have all the "rights, privileges, jurisdictions and immunities" possessed by parliaments summoned by writs under the great seal of England.[7]

The above are the provisions of the triennial act in its final shape. We may now turn to the story of its passage.[8] On December 24, 1640 Strode introduced in the commons a bill for

[7] Note that the act did not provide for triennial elections, nor did it limit the duration of parliament. It was concerned with the frequency of parliamentary sessions.

[8] *Commons Journal*, II, pp. 58, 60, 70.

annual parliaments.[9] On the 30th it was referred to a committee including Strode, Pym, Hampden and Cromwell, and in the committee stage the bill was changed so as to provide for triennial instead of annual parliaments. At the time of its passage in the commons, (January 20) the bill joined hands with a revenue measure for the relief of the king's army in the north—its companion for the remainder of the journey through parliament. This combination of money grant with constitutional redress was habitual with the parliaments of this troubled time.

While these bills were under consideration in parliament, the king, evidently worried because of the radical measures which the leaders were undertaking, commanded both houses to come to him at Whitehall and lectured them regarding the "distractions of the government." After referring to certain dangers which needed attention, and declaring his purpose touching some of the measures then pending, he discussed briefly two proposed laws to which he could not assent, the denial to the bishops of a voice in parliament, and the triennial bill. Having disposed of the question of the bishops he continued:[10]

"There is but one other rock, and that not in substance but in form, yet that is so essential that except it be reformed it will mar the substance. There is a bill given for frequent parliaments; the thing I like, that is, to have often parliaments, but to give power to sheriffs and constables and I know not whom to do my office, that I cannot yield unto. But to show you that I am desirous to please you in forms which destroy not the substance I am content you shall have an act for this purpose, but so reformed that it neither intrench upon my Honor nor that inseparable right of the crown concerning parliament."

After this lecturing the houses resumed their work, and so far as the triennial bill was concerned the speech had practically

[9] This bill originally provided that if in every year the king had not issued writs for the elections before the first Tuesday in Lent, the returns were to be made without the usual intervention of the crown. This would have meant annual elections, as well as annual parliaments, and Charles would never have consented to such a measure. See Gardiner, *History of England from the Accession of James I to the outbreak of the Civil War, 1603–1642*, IX, pp. 252–253.

[10] *Parliamentary History*, IX, pp. 170–171. (The speech is dated January 25.)

no effect except perhaps to induce a greater degree of care in order to secure the royal assent. The companion bills, slightly altered in the house of lords, were submitted to the king on February 15, backed by a deputation from both houses urging his approval.[11] The curt response was that the king's pleasure would be made known on the morrow. Accordingly, on the 16th, the king came to the house of lords, and "being seated on his throne, the lords in their robes, and the commons with their speaker in attendance," the title of the triennial bill was read and the king briefly announced his assent.[12] His remarks indicated that he regarded this action as a gracious concession.[13] He expressed trust in the parliament, but his mind was evidently distressed with fears for his prerogative, and his reluctant assent had no more than a merely formal significance. Even so, the passage of the act was made the occasion of elaborate celebration. The two houses sought an audience with the king that they might express their thanks, and were received in the banqueting-house at Whitehall for the purpose. A flattering vote of thanks was read,[14] and the passion for celebration was gratified by bonfires and the ringing of bells throughout the city. How these marks of popular rejoicing must have affected Charles we can only imagine.

Such were the main incidents connected with the passage of the triennial act of 1641. Its purpose is apparent. The revolutionary Long Parliament with the king at their mercy and with a burning sense of abuses long unchecked, proceeded to establish

[11] *Commons Journal*, II, pp. 85–86.

[12] *Parliamentary History*, IX, pp. 178–182.

[13] Charles's conciliatory attitude can hardly be regarded as anything more than an indication of his helplessness. He was too much of a Stuart to acquiesce in so radical a measure without extreme reluctance, yet his position was so weak that at least temporary conciliation was the only course possible. It is interesting to compare this rather complacent speech of Charles with his vigorous proclamation in 1629 on the memorable occasion of his dissolution of parliament. Then he had declared: "We have showed by our frequent meeting our people our love to the use of parliament; yet the late abuse having for the present driven us unwittingly out of that course, we shall account it presumption for any to prescribe any time with us for parliament." There is no reason to believe that the king's intentions, as indicated by this speech, had been altered by 1641.

[14] *Commons Journal*, II, p. 87.

such limitations of the royal prerogative as would make the house of commons the supreme authority in England. To this end the very process of summoning parliament was made independent of the king. The only step which was still needful to make secure the supremacy of this audacious parliament (a step, however, not comprehended within the legitimate motives behind the triennial act), was taken in May 1641, when it was enacted that the existing parliament should not be dissolved or prorogued without its consent.[15] Control thus passed completely into the hands of the leaders of the commons, and the basis for a new tyranny—the tyranny of a parliament under a military dictator—was laid.

For twenty-three years the triennial act of 1641, with its guarantees of parliamentary independence, continued as law. The fact that its extreme provisions were never put into operation was due to the revolutionary character of the times. With the Restoration, however, the government of England by king, lords and commons was reinstated, and royalty in the abstract aroused enthusiasm among the majority (at least) of the Cavalier parliament.[16] Hence the very thought of a measure so derogatory to the royal prerogative as the triennial act remaining on the statute-books was offensive. Furthermore, the act belonged to the "age of heroics," to use Fletcher's apt phrase, whereas England had now passed into the "age of common sense."[17]

[15] 16 Car. I, c. 7.

[16] The ultra-royalist character of Charles II's Long Parliament should not be overemphasized. According to the important Anglican writers of the period, as for instance Clarendon, the insignificance of the opposition in this "cavalier" and "servile" parliament would seem a plausible justification for many of the extreme measures passed, particularly against non-conformists. But taking this view we are at a loss to explain a peculiar fact revealed in the records—namely, that the votes on all the important government measures show a strong opposition which at times exceeded a third of the total membership of the commons. For an example of Clarendon's reference to the numerical strength of the Presbyterian party, see Clarendon's *Life* (Oxford ed., 1759), p. 153, and compare W. C. Abbott, The long parliament of Charles II, *English Historical Review*, XXI, pp. 21–56.

[17] C. R. L. Fletcher, *An Introductory History of England*, 1660–1792, pp. 1–2.

When the parliament convened on March 16, 1664,[18] a speech from the throne warmly recommended to them the repeal of the triennial act. The king was surprised that parliament had not considered the "wonderful clauses" in the bill, "which passed in a time very uncareful for the dignity of the crown or the security of the people." "I pray, Mr. Speaker," said he, "and you gentlemen of the house of commons, give that triennial bill once a reading in your house; and in God's name do what you think fit for me and yourselves and the whole kingdom. I need not tell you how much I love parliaments; never king was so much beholden to parliaments as I have been; nor do I think the crown can ever be happy without frequent parliaments. But assure yourselves, if I did think otherwise, I would never suffer a parliament to come together by the means prescribed by this bill."[19]

In these words, which we know to have had great weight in the parliament, we can see the principal motive for the repeal—namely, the desire to save the royal prerogative, and to fulfill Charles II's wish. Another motive, however, was shrewdly hinted at in this speech. Some, said the king, had fancied by a "computation of their own upon some clause in the triennial bill, that the present parliament was at an end some months since." The Cavalier parliament in the spring of 1664 had been in existence for three years, and the impression seems to have been widespread that according to the triennial act it must terminate at the end of its third year. This was clearly a miscon-

[18] An unsuccessful attempt to effect the repeal was made in the first parliament of Charles II. On April 3, 1662 the proposition for unconditional repeal was discussed, and a repeal bill was ordered to be brought in, a committee of three being directed to prepare the bill. The only open opposition was a vigorous speech in the commons by Vaughan, who later became speaker of the lower house. He was surprised at the haste with which the repeal was being rushed through. The triennial act seemed to him salutary, and the "non-sitting of parliaments" would, he feared, produce mischievous results. In place of an unconditional repeal he would propose a compromise bill which would retain the provision for triennial parliaments, but remove such clauses in the existing act as were thought to be disrespectful to the king. The suggestion was not acted upon at the time, and the session closed with the triennial act still nominally in force. *Commons Journal*, VIII, p. 395; *Calendar of State Papers, Dom.* 1661–2, p. 330.

[19] *Parliamentary Debates*, IV, pp. 290–291; *Lords Debates*, I, pp. 67 fol.

ception; the act provided that the interval between parliaments should be no longer than three years, but there was no clause restricting the life of a parliament to three years. No parliament under existing law was liable to dissolution as long as the king lived, unless he chose to dissolve it. The fact, however, that the wrong impression existed in the popular mind made it seem more necessary to repeal the law. Such a misapprehension need not be a source of wonder when we reflect that so famous a writer as Hallam falls into the same error in his discussion of the triennial act.[20]

The repeal bill proceeded through parliament with only slight opposition.[21] It reached the first reading in the commons on March 23, and passed on the 28th; the lords agreed to it on the 31st, and it received the royal assent April 5.[22] At the time of its commitment the commons resolved to caution the committee

[20] Hallam, *Constitutional Hist.*, I, p. 515. Fletcher, (*Introductory Hist. of Eng.*, III, p. 20) a careful though vivid writer, in stating that the triennial act was repealed in 1664 "in order to prevent the necessity of a *new* parliament being called every three years" fails to add that this involved a misconception of the provisions of the act of 1641. An act may be "triennial" in several senses. It may provide triennial elections with or without annual parliaments, or it may fix a maximum triennial duration, or it may simply set a three-year period as the longest interval between parliaments. It was the last of these courses that was followed in the triennial act of 1641. It did not require a new parliament every three years. It dealt not with the duration of parliaments, but merely with their frequency.

[21] The debates are not reported in Hansard, nor in Chandler's *Commons*, and do not seem to have been memorable. According to Pepys there were many in the commons displeased with the bill, though they dared not say much. By the same authority we learn of three vigorous speeches against the bill. Mr. Prin compared the bill to "the idol whose head was of gold and his body and legs of different metal," and it cannot be denied that the measure contained contradictory elements. Sir Richard Temple spoke "very discontentful words in the House about the bill." Also Vaughan, who in 1662 had opposed the repeal, now declared himself "in a speech of an hour and a half with great reason and eloquence against the repealing of the bill . . . . but with no success." There are indications that under the surface there ran a rather strong current of opinion against the bill. On the day of its passage Pepys exclaims: "But Lord, to see how the best things are not done without some design, for I perceive all these gentlemen that I was with today were against it." He then suggests that it was passed to satisfy the king, "and should he demand anything else, I believe they would give it him." Pepys, *Diary*, March 26, 28, 1664.

[22] *Commons Journal*, VIII, p. 537.

"that there be no clause in the bill of coercion on His Majesty for the calling of parliaments, other than there is for the execution of other laws."

That the repealing statute[23] was itself a measure for triennial parliaments (thus adhering to the central purpose of the original act) is shown in the title which read: "An act for the assembling and holding of parliaments once in three years, at the least, and for the repeal of an act . . . . for the preventing of inconveniences happening from the long intermission of parliaments." The preamble[24] declared that the act of 1641 was "in derogation of His Majesty's just rights and prerogative inherent to the imperial crown of this realm, for the calling and assembling of parliaments, and may be an occasion of manifold mischief and inconvenience and much danger to the peace and safety of His Majesty and all his liege people of this realm." After declaring the repeal, the statute continued, as if addressing the king: "Within three years after any parliament, your Majesty (heirs or successors) *do issue out your writs* for the calling of elections to the end that there may be a frequent calling, assembling and holding of parliaments once in three years at the least." The mild expression "your Majesty do issue out your writs" contrasts beautifully with the vigorous wording of the original statute.

For this easy compliance of his parliament the king was highly grateful. "Every good Englishman," said he, "will thank you for it. For the act you have repealed could only serve to discredit parliaments and to make the crown jealous of parliaments and parliaments of the crown, and persuade neighbor princes that England was not governed under a monarch. It could never have been the occasion of frequent parliaments." Continuing, he pledged himself to be "not an hour the less without parliament"[25] for the act of repeal. In his concluding outburst of

[23] 16 Car. II, c. 1.

[24] Lyddal, in the debate on the septennial bill in the commons, referred to this as a "very remarkable preamble." *Parliamentary Debates*, VII, p. 311.

[25] This is the reported wording. The king probably meant *to say* the very opposite. Chandler's *Commons*, I, pp. 75–76.

confidence he declared: "I am confident that you and I who agree in the end will never differ in the way."

One other point in connection with the repeal remains for our notice. The sequel to the act throws an interesting light on the sincerity of Charles II's speeches. The king's assurance that parliaments should be no less frequent because of the repeal might mean a good deal or it might mean nothing. In Charles's mind it probably represented no binding pledge, but to the parliament it must at least have signified that the king could be relied upon to carry out the mildly expressed mandate for issuing writs after three years' intermission. As a matter of fact during the last four years of his reign Charles ruled without a parliament. In this transitional period the relation between crown and parliament was not clearly fixed, hence this overriding of the statute was tolerated. The royal prerogative still represented an actual power.

When the duration of parliament was next altered, the revolution had brought its constitutional changes, and parliament was now supreme. The triennial act of 1694 followed no extreme course; it neither yielded to nor attempted to override the king's will, but manifested a temper more in keeping with the normal principles of English law.

By glancing at the party divisions of William III's reign we observe that the Whigs and Tories were not clearly defined parties, but each was split into factions. Both had united, though with different motives, to bring about the revolution. The issues following close upon the revolution were such as to cause a shifting of party lines and the controversies between Whigs and Tories were at times less significant than the differences which arose within the parties. The careers of such men as Marlborough and Halifax illustrate well the ease with which public men of the time shifted their political allegiance.

It was to the Whigs that William at first looked for support. They had been responsible for the successful resistance to James II, and had made possible the enthronement of William. It was no part of their program, however, to strengthen the royal prerogative. Above all their party creed called for the preserva-

tion of the constitutional theories established by the revolution, and this meant the supremacy of parliament. This fact was well revealed by the attitude of the Whig majority of the Convention parliament of 1689 on the mutiny act. In order to make parliament supreme the authorization to use the power of court-martial over the army was limited to one year, so that annual parliaments should become necessary for the yearly renewal of the grant. Appropriations were similarly limited, and since the revolution these two "grants" have been annual.

The problem of preventing a long intermission of parliament had now been solved. By the device of the mutiny act and the annual grant of supplies there was quietly added to the body of English constitutional principles the rule that parliamentary sessions must henceforth be annual. No longer need the country fear such an interruption of the legislative function as that which had so exasperated the people during the time of Charles I, and which to a less degree had menaced popular liberty under Charles II. Another problem of perhaps equal importance, however, was still to be solved—how to prevent a king from retaining a parliament to his liking long after it had ceased to be in harmony with popular opinion. Not the interval between parliaments, but the length of life which should be allowed to a single parliament, was the point to be determined. The fact that in each case the laws are referred to as "triennial acts" may be somewhat misleading unless this distinction is understood.

William's second parliament, which met March 20, 1690, was composed chiefly of Tories. The division between the parties was so close, however, and there was so little stability in their relative strength, that a few absences, or the failure of a few proxies, might at any time turn the scales one way or the other. The Whigs as a body were less in sympathy with the king than they had been earlier in the reign, and were sure to take advantage of an opportunity to limit the prerogative. The Tories were divided between the courtiers who stuck close to William and the opposition Tories, among whom Halifax and Mulgrave were conspicuous leaders. There existed, moreover, a hostility between the two houses which seriously affected legislation, and

led to votes which could not at all be explained with strict reference to the merits of the questions involved.

To these complications, which might easily give an unexpected turn to such a piece of legislation as the triennial bill, there was added another element, namely the place bill. Since the king's influence depended largely on his power to bestow lucrative positions upon his supporters in parliament, the opposition had brought in a bill to prevent members elected after the first of the following January from accepting office under the crown. Certain of the tory supporters of William had argued in the debate against this bill that its passage would induce the king to continue indefinitely a parliament in which his pensioners for the time being constituted so powerful a factor. Unwittingly they thus committed themselves to the view that a prolongation of the existing parliament for such a period as the king might desire would be a serious grievance. Taking advantage of this admission, the opposition leaders presented[26] in the house of lords a bill limiting the duration of parliaments. The author of this bill was Lord Shrewsbury, the "most distinguished of those Whigs who were then on bad terms with the court."[27] Shrewsbury's bill,[28] of which the original draft is preserved, bore the vague and misleading title: "An act for the frequent meeting of parliaments."[29] As presented, it provided for annual in-

[26] January 12, 1693.

[27] Macaulay, *Hist. of Eng.*, (1856 ed.) IV, 274.

[28] Shrewsbury's bill had provided for annual parliaments, but this provision was given up, and instead it was enacted that a parliament should be held once in three years at the least. This change from annual to triennial sessions might seem to signify more than it does. It was probably thought that annual parliaments were sufficiently assured by the mutiny act, and the appropriation clauses in the yearly bills of supply. In that case, this clause of the triennial act was without much significance. See Hallam, *Constitutional History*, II, p. 202.

[29] *Historical Manuscripts Commission, Report,* XIV, pt. vi, pp. 299–302. The editorial comment in this report is worth quoting: "Comparing this bill with the acts of 1640 (new style, 1641) and 1664, it is interesting to note how the different senses in which each of them was 'triennial' reflects the prevailing political feeling of the time. The act of Charles I provided for the yearly holding of parliament, and was triennial in that it compelled the assembling of parliament if not summoned for three years. That of the Restoration left the king's

stead of triennial parliaments. A new parliament was to be summoned every year, and a compulsory clause required the lord chancellor to issue the writs in default of direction from the crown. After a thorough recasting in the committee of the whole house the bill provided that a new parliament should sit every three years, that there should be no compulsory means of summoning, and that a time be set for the existing parliament to terminate.

The progress of the bill through the two houses illustrates well the complication of motives which it aroused. Macaulay thus explains the practical unanimity among the peers in favor of the bill.[30]

"William in vain endeavored to induce those peers in whom he placed the greatest confidence to support his prerogative. Some of them thought the proposed change salutary; others hoped to quiet the public mind by a liberal concession; and others had held such language when they were opposing the place bill that they could not without gross inconsistency oppose the triennial bill. The whole house, too, bore a grudge to the other house, and had a pleasure in putting the other house in a most disagreeable dilemma."[31]

hands free as to annual sessions, and was triennial in 'beseeching' him to summon parliament at least once in three years. The present bill, while reverting to annual sessions, is triennial only in limiting the duration of parliament to three years, thus being directed to an abuse of power not by the crown, but by parliament itself." *Ibid.*, preface, p. xv.

[30] Macaulay, *Hist. of Eng.* (1856 ed.), IV, p. 274.

[31] One of the speakers in favor of the bill was Lord Halifax, a malcontent Tory who had formerly been one of the king's ministers, but had become identified with the opposition. "Is this a parliament, or a party?" he asked. "If the first, why fear another? If the last, is there anything to be said for it?" He considered it strange "to fear that for which the revolution was princially undertaken." The bill seemed to him the only remedy against two serious evils—the evil of governing without a parliament, and that of modeling a standing parliament. As to the argument that new experiments were unseasonable while the war lasted, it was baseless, for was not the true constitution of England to be called a new experiment? A war and a parliament which seemed agreed to continue one another furnished, indeed, a precedent for any king. In answer to the contention that the enactment of the bill would justify the scandal of corruption in the existing parliament, he declared that nothing would support the scandal so much as the continuation of the parliament. He ingeniously remarked

In the lower house the bill provoked great exasperation. The arguments against it touched not so much on the merits of the question as upon the special circumstances connected with the presentation of the bill at that time. These circumstances made the bill seem like a bitter dose even to those who favored its principles. The lords, whose seats would not be affected, were calmly originating a measure which would seriously encroach upon the authority of the commons. Not only were they usurping a function which the commons alone should exercise, but they were basely seeking popularity by a measure which would cost them nothing, but would cost the house of commons and the crown dear.

This resentment, however, could not outweigh the desire to pass a popular measure and to remove the scandal which hung like a cloud over the assembly. Supported by the Whigs as a body and by an element in the Tory party, the bill withstood the strenuous efforts of the court to defeat it. It passed the commons by a vote of 200 to 161 with an amendment extending the existing parliament to March 24, 1694. To this amendment the lords agreed, and the bill was presented for the king's assent.

William (though a monarch by parliamentary title, not divine right) was jealous of his prerogative, and the triennial bill was very distasteful to him. He delayed his decision, and besides consulting his ministers who advised in favor of the bill, he sent for the opinion of Sir William Temple,[32] then living in retirement. Temple, through his secretary, strongly urged the passage of the bill, emphasizing the disasters of the Long Parliament which would never have taken place had such a law as the triennial act been in force. The arguments failed to move William, however, and just before the prorogation it was announced that the royal assent was withheld.

that in many minds the only reason for keeping this parliament would be that the government might not be put to the repeated expense of making new friends. (For the original notes, of which the above is a paraphase, see Foxcroft, *Life and Letters of Saville*, II, p. 162.)

[32] Temple's secretary, sent to present the statesman's views to the king, was Jonathan Swift, then a young man of about twenty-five years. As described by Macaulay, this is a fascinating incident in Swift's early life.

Two unsuccessful attempts during the year 1693–4 were made to carry the triennial bill.[33] The next session proved a more fortunate one for the measure,[34] for this time William gave his consent.[35] He was greatly depressed by the illness of his queen, who died soon after, and seems to have decided to conciliate the Whigs with whom he had been out of harmony for some years. A grant of tunnage accompanied the measure, hence Burnet suggests that the triennial bill was, by express bargain, the price of supply. It has been remarked as fortunate that the bill was presented at the time of the queen's illness, since this undoubtedly affected William's action, while at the same time it obscured the fact that he was yielding to necessity in giving his approval.

According to the act of 1694[36] writs were to be issued under the royal authority within three years at the farthest from the termination of any parliament, though as we have seen, the effective practice in favor of *annual* parliaments had now been definitely assured. No parliament was to continue longer than three years (this was the important provision) and the existing assembly was to be dissolved on November 1, 1696, or sooner if their Majesties should see fit. Another constitutional reform had successfully weathered the storms of parliamentary and royal opposition.

Perhaps no statute illustrates so well the extreme reach of parliamentary authority as the septennial act of 1716, passed under exceptional circumstances by a parliament which deter-

[33] In the first attempt, which was made in the commons, the bill, after passing its third reading without division, was defeated on the final vote by an unexpected temporary ascendancy of the opponents of the measure. Lord Monmouth (Whig) then brought in practically the same bill in the lords. It was passed and sent to the commons, but animosity against the patrician order prevailed, and the bill was rejected, 197 to 127. *Commons Journal*, X, p. 40. (December 22, 1693.)

[34] On November 19, seven days after the opening of the session, the commons ordered Mr. Harley to prepare a bill for the frequent meeting and calling of parliaments. It was carried with dispatch through both houses. It first reading in the house of commons occurred November 22; its passage, December 13. On the 18th the lords gave it their concurrence without amendment, and it was submitted, together with the bill for the grant of tunnage, to the king for his assent. *Commons Journal*, II, p. 172, 187.

[35] *Commons Journal*, II, p. 193. (December 22, 1694.)

[36] 6 & 7 Will. & Mary, c. 2.

mined for the good of the country (and the interest of the Whigs) to extend its own term four years beyond that to which existing law entitled it, and for which it had been chosen by the constituencies. In the period from 1694 to 1716 party rivalry had been keen. During the greater part of the reign of Anne, the Whig power had been predominant, but there were frequent fluctuations in party strength, and neither party had been sure of maintaining control long enough to carry partisan measures of importance. The Whigs, as the special champions of the continental war and the Protestant succession, regarded themselves as the preservers of the honor and safety of England. At critical times the Tories had been strong enough to control the administration. Their half-hearted support of the war, their attempt to secure permanent power (*e.g.*, by the occasional conformity bill), and the known sympathy of many of them with the cause of the Pretender, greatly alarmed the Whigs and gave substance to the dread of Jacobitism and Toryism even after these names had ceased to stand for any considerable power in England.

The year of the accession of George I, 1714, marks a radical change in the course of party history in England. The Toryism of the seventeenth century practically died out with the advent of the first Hanoverian ruler, and a long period of Whig supremacy followed, which continued till the colonial and foreign policies of the eighteenth century gave rise to new issues. The first general election of George I's reign brought in an overwhelming Whig majority, and the two principal Tory leaders, Bolingbroke and Ormonde, fled to the continent to associate themselves with the Stuart pretender.

In the fall of 1715 occurred the ill-fated attempt to place the Chevalier de St. George on the English throne. The expedition had no foreign support whatever, and aroused but little enthusiasm in Scotland, and less in England. The Earl of Mar and the Pretender himself had none of the qualities of leaders, and the uprising was easily put down after two engagements at Sheriffmuir and Preston. Although the country showed little or no enthusiasm on personal grounds for George I, yet the cause

of the Protestant succession was dear, and Jacobite sentiment was weak and scattered.

This feeble and harmless rebellion was the occasion that gave rise to the septennial act. On April 10, 1716, the Duke of Devonshire introduced the bill for septennial parliaments in the house of lords.[37] He supported it by a speech in which he deplored the inconveniences of triennial elections which served only to "keep up party divisions and to raise and foment feuds and animosities in private families," which occasioned "ruinous expenses" and gave a "handle to the cabals and intrigues of foreign princes." "Though the rebellion was happily suppressed, yet," he declared, "the spirit of it remained unconquered, and seemed only to wait for an opportunity to show itself with more violence." The election of a new parliament, which according to the triennial act was not far off, was to occur at "the most favorable juncture the disaffected could expect," therefore he thought it "absolutely necessary to deprive them of it." We have in these few words of Devonshire a frank statement of the motives behind the septennial bill. Its purpose was to keep in power a ministry and a parliament which dreaded, no doubt with all sincerity, the danger of an election at a time when the country was so distracted as a result of the late riots and rebellion. The next election, to be sure, would not have come till a year from the following fall (1717) but it was thought necessary to foil the opposition by taking away at once an opportunity which they anticipated, and on which they might build hopes and plans.

Devonshire's bill (which is the same as the final statute except that the number of years was left blank) was nearly all preamble, and its enactments were reduced to a small paragraph. It is entitled,[38] "An act for enlarging the time of continuance of parliaments, appointed by an act made in the sixth year of the reign of King William and Queen Mary entitled 'an act for the frequent meeting and calling of parliaments.'" The preamble in enumerating the reasons for a new law closely followed the points of Devonshire's speech, and paid its respects to the "rest-

[37] *Parliamentary Debates*, VII, pp. 294–295.
[38] I Geo. I, *Stat.* 2, c. 38.

less popish faction" which was threatening public security. It was therefore to be enacted that all parliaments including the existing one were to "have continuance for *seven*[39] years," unless sooner dissolved by his Majesty.

The serious character of the bill is attested by the long and spirited debate which it aroused.[40] The supporters of the measure justified their position chiefly by denouncing frequent elections and playing up the danger of an approaching contest at the time. Elections caused great heats. "When party healths go round," declared the Earl of Ilay, "the naming of one general before another often produces a bloody quarrel; and, which is far worse, the sacred name of the church is impiously profaned in the streets and joined with treason." The bribing of corporations and the subjection of the constitution to the caprice of the multitude were rather inconsistently classed together as abuses characteristic of the existing system. It was urged that alliances would be formed with more confidence "if it was seen that the government was not precarious." The revolution, it was argued, was only temporarily checked, the Jacobites were as insolent as ever, and England must at all hazards be saved from the clutches of this monstrous popish faction.

Those who spoke against the septennial bill rested their case chiefly on constitutional grounds, and the weight of real argument was clearly on their side. Such a measure, they contended, would overthrow the constitution. The house of commons would cease to represent the people, and instead of allaying the rebellion the act would rivet the disaffected in their prejudices against the government. If so radical a remedy were applied because of a slight rebellion, then there could be no guarantee that the same

[39] Filled in by the lords after debate.

[40] Upon the question of commitment the lords debated for five hours, and another debate of two hours arose when the bill was reported from committee. The Earls of Dorset and Ilay and the Duke of Newcastle gave the most significant speeches for the bill, while Lords Trevor, Buckingham, Aylesford and Nottingham opposed the measure. *Parl. Deb.*, VII, pp. 299–307. After the bill passed the upper house some of the Lords who dissented from its provisions presented a written protest, setting forth the reasons for their opposition. *Ibid.*, p. 306. In the house of commons the most notable speech was that of the Tory Shippen, against the bill. *Ibid.*, pp. 312–321.

means should not be advanced later to justify a still further extension of the rule of the existing parliament. Experience showed that long parliaments were pernicious and subversive of liberty, whereas the triennial act afforded to the people the opportunity to remedy the abuse of corruption. To pass the bill would be to imply that the gentlemen of Great Britain were not to be trusted in a new election, and for the commons to accept such a bill from the lords was plainly inconsistent with their honor. The only authority of the existing parliament was derived from the triennial act—a measure secured as a product of the revolution, a concession from William to his subjects which ought not to be repealed. The existing ministry, moreover, so far from being the object of trustful care, should be jealously watched.

It is quite common in modern parliamentary bodies for a lengthy debate to produce little effect on the final vote. The motives of the speakers prompt the arguments, especially where personal and party interests are involved, whereas the supposed purpose of having a deliberative body is, in some way, to allow arguments to affect motives. The final votes on the septennial bill (69 to 36 in the lords; 264 to 121 in the commons) showed little evidence of being based on intelligent deliberation. Most of those who favored the measure were officers in some capacity under the crown.

In spite of the grave apprehensions aroused at the time of its passage, the septennial act remained law for nearly two centuries, and the longer parliamentary term has been amply justified.[41] The real effect of the measure was to produce a great irregularity in the duration of parliaments, and the times of holding elections. Here, as in so many other departments of the English system,

[41] An unsuccessful attempt was made in 1734 to repeal the septennial act. Aside from this the opposition to the measure has been insignificant. One of the demands of the Chartists was for annual parliaments, *i.e.*, annual parliamentary elections. Disraeli in his early career favored triennial parliaments. "I wished to break the strength of the Whigs by frequent elections, and by frequent appeals to a misgoverned people; therefore I advocated a recurrence to those triennial parliaments which it was once the proud boast of the Tories to advocate." Monypenny, *Life of Disraeli*, I, p. 283.

usage has supplemented the written law, and elections have been set, not by the termination of parliament by statute, but by the issues of the time which have created genuine occasions for appeals to the nation.

It was during the crisis of 1910–11 in British politics that the septennial act was overthrown and a new maximum limit of five years established. The program of the dominant party in this whole controversy over the parliament bill may well seem extraordinary to the student of politics who recognizes in the English people a high capacity for political development. Here was a radical alteration of the British constitution, a step towards single chamber legislation, opposed by an important element in the nation both because the measure itself was repugnant to them, and because the deal of the ministry with the Irish Nationalists made it certain that the new parliamentary device would be used to enact a party policy—home rule. This constitutional alteration was not passed in a strictly parliamentary way, but was forced through under the threat to create enough peers to pack the upper house with an artificial majority, a procedure which could certainly have no justification in a scientific parliamentary system. The measure itself, when once passed, rejected the perfectly logical program of reforming the upper chamber,[42] abandoned the principle of a referendum, and set up the clumsy plan of overriding the lords' veto by three successive passages of a bill within two years. The intensity of the opposition to this revolutionary change, the stormy scenes which the government had to face, and the determined devotion of the "die-hards" who insisted upon resistance to the last ditch, gave evidence of the violent upheaval in political life which the parliament act occasioned. It is hardly to be expected that the new process of legislation will have any permanency, or even that its supporters will be pleased with the manner of its operation in practice.[43]

[42] In the preamble the ultimate purpose of reforming the house of lords was avowed, but this was an indefinite postponement of a policy upon which enlightened sentiment had been focusing for years.

[43] See A. L. P. Dennis, The Parliament Act of 1911. AMERICAN POLITICAL SCIENCE REVIEW, VI, pp. 194–215, 386–408.

The ministry could, of course, answer that the lords had ignored the well established limits on their power, that this "burial board of reforms" must no longer be allowed to thwart the popular will, that a permanently conservative and notoriously inefficient body of law-makers was a standing menace, and that so salutary an end might justify the most questionable means. Their position was markedly strengthened by their consultation of the people in the December, 1910 election—a shrewd move in Asquith's game—and they could well plead that the government was under a "mandate" to enact this constitutional reform. They could further show that there was no intention of abusing the power which the act would confer upon them. But even so, the unscientific manner of approach to their reform could not but be painful, and some concessions on their part would certainly be expected.

The shortening of parliamentary duration was a rather obvious concession which the Asquith government offered as a sort of palliative against the drastic provisions of the parliament bill. It was included by Campbell-Bannerman in his draft of 1907, and was referred to by Home Secretary Churchill as a "necessary and inseparable" part of the reform. Now that the house of commons was to be freed from the absolute veto of the lords it was considered essential that the term of its members should be shortened in order to draw them closer to the electorate, lest they should "outstay their mandate."[44]

In April, 1910 this policy of five-year parliaments was extensively debated as a part of the Asquith resolutions.[45] The opposition emphasized the ill effect of more frequent elections in increasing the power of the cabinet and the caucus as party agents, and in so enhancing the cost as to discourage candidates of slender means, but it was pointed out that even under the septennial act there was no security against frequent elections, and that the average duration since the reform bill had actually been slightly over four years. Some arguments were advanced in favor of fixity of tenure, establishing five years as a rigid par-

[44] Asquith, in 21 *H. C. Deb., 5th ser.*, c. 1749.
[45] 16 *H. C. Deb., 5th ser.*, cc. 1493–1526.

liamentary term, but this was aside from the question, and such a law would seem to be out of harmony with the essential character of the parliamentary system which allows for elections whenever political issues demand them. In general the debate was of minor significance, as many who normally opposed the government were content with this concession. When the resolution was put "That it is expedient to limit the duration of parliament to five years," the division showed 334 ayes and 236 noes.[46] Of course the vote at this stage served merely to place the Liberal party on record as favoring five-year parliaments as a feature of their new scheme.

In another year the Asquith resolutions had become the parliament bill. Though this measure contained a clause limiting the parliamentary term to five years, yet, in view of the sweeping power which the bill as a whole gave to the house of commons, this provision seemed an insufficient guarantee to some of the leaders of the opposition. Hence we find Lord Avebury presenting an amendment excluding from the new legislative procedure any bill to extend the maximum duration of parliament beyond five years.[47] By this amendment the house of commons would be prevented from prolonging its existence by its independent action. Avebury admitted the intention of the government to adhere to the five-year limitation, but doubted whether it would be able to resist the pressure of circumstances. In this connection he referred to an historic occasion when the house of commons and the army destroyed the house of lords—their next step was to prolong their existence indefinitely.

Though the government was not contesting this amendment, yet Lord Morley spoke squarely against it. The actions of the Long Parliament, he thought, passed in times of tremendous civil and military confusion, should not even be mentioned as a possible precedent. "You might as well quote Barebones parliament as a reason why there should be no parliament at all." He was surprised that the noble lord should suppose the house of commons so indifferent to self-respect and to popular opinion as

[46] 16 *H. C. Deb., 5th ser.*, c. 1526.
[47] 9 *H. L. Deb., 5th ser.*, cc. 6–7. July 3, 1911.

to prolong its own existence. He was afraid that the amendment could not be accepted.

The Unionist floor leader, Lord Lansdowne, in answering Lord Morley declared that His Majesty's governments were not always free agents, as on occasion they were expected to "toe the line." Might not a critical moment arise when, "not of their own free will, but under the coercion of their supporters," they might be induced to adopt a proposal of this kind? At any rate, if the noble viscount thought the thing so inconceivable, there would surely be no great harm in accepting the amendment without further to-do. The home secretary's statement that the shorter duration was an essential feature of the government's plan had put the thing on a pedestal of its own.[48] And would the noble viscount remember how completely any extension of the duration of parliament would modify the conditions of this bill? The prime minister had explained that under the quinquennial system the full advantages of the new parliamentary device were possible only for measures introduced during the first two or three years of a given session. But if the duration should become six or seven years, the whole basis of the settlement would be fundamentally altered.

After some further debating the amendment was agreed to, and the parliament act as finally passed not only declared that "five years shall be substituted for seven years as the time fixed for the maximum duration of parliament under the septennial act," but rendered this limitation unalterable by the exclusive action of the commons and the king. If self-denying laws may be regarded as safeguards, here was an effective check against any serious abuse of that ultimate omnipotence which the new legislation was conferring upon the lower chamber.

On January 31, 1916 the duration feature of the parliament act would first have become applicable, thus forcing a general election at a critical period of the great war, when the Irish crisis, the struggle over conscription, and the lack of conspicuous success in the conduct of the war were embarrassing the coalition

[48] 29 *H. C. Deb., 5th ser.*, cc. 999, 1094–1095.

government. Under the circumstances, a general election (automatically set) was not wished by any considerable political group. A truce in the conflict of parties had been declared, and Liberals, Unionists, Irish Nationalists, Ulstermen and Laborites were coöperating for the supreme object of winning the war. Besides a dread of the uncertainty and upheaval attending a political contest, there was the feeling that an election conducted in the absence of so vast a number of the voters would be unrepresentative.[49] That some sort of measure for suspending the operation of the parliament act would pass without substantial opposition was therefore to be expected.

At this point, however, a complication arose over a highly controversial measure of the Liberal party, viz., the plural voting bill, which had twice passed the House of Commons to be rejected each time by the lords. Had events remained normal, the Liberals could have carried their measure a third time in the same parliament, and it would thus have become law under the parliament act. But according to the "compact" of the coalition, "no controversial business should be pushed forward," while on the other hand, "nothing should be done to prejudice the interests of those who have been parties to former controversies."[50] Under this compact, the Liberals argued, the mere passage of

[49] The expedient of having the soldiers vote in the field seems not to have been considered at this time though it was debated in the following August. Many of the States, during our Civil War, had legislation on this subject. State constitutions often had to be amended as regards the manner and place of voting for state officers, but regarding presidential electors and congressmen the state legislatures could act. Either the ballot-box was taken to the soldier in the field, or someone in the home precinct cast the vote by proxy. Where there was no legislation on the subject, soldiers were sometimes furloughed to vote at home. Congress, of course, could pass a uniform law touching the matter as regards national elections, and indeed a provision permitting soldiers on duty on the Mexican border to vote in the November elections was presented this year as an amendment to the army appropriation bill, but the amendment failed, and absent soldiers may vote only where state laws permit it. On August 22, 1916, Lord Salisbury introduced in the British parliament a bill to permit soldiers at the front and in hospitals to vote, but the military leaders disapproved of the policy, and the government felt that the existing time was no occasion for such a fundamental alteration of the constitution. See J. H. Benton, *Voting in the Field, A Forgotten Chapter of the Civil War.* (Boston, 1915.)

[50] Lord Lansdowne in the House of Lords. 20 *H. L. Deb., 5th ser.*, c. 844.

time would work them injury as regards the plural voting bill, and a clause was therefore inserted (it should become a classic among the fictions of English law) providing that "section two of the parliament act, 1911, shall, in relation to any public bill passed by the house of commons after the passage of this act and during the continuance of the present parliament, have effect as if the session ended in September, 1914 and the session in which the bill is so passed were consecutive sessions."

This curious provision would make it conceivable, though perhaps not likely, that the bill to eliminate plural voting might become law during the life of the existing parliament. Voices of protest were emphatically raised, in parliament and out, at this "administering of oxygen to the plural voting bill,"[51] but the Unionist leaders themselves (including Bonar Law and Lansdowne) agreed to it, and the clause was retained as a part of the parliament and registration act.

As to the length of the extension there was some vacillation. At first the cabinet planned to keep the existing parliament alive during the war and for a year and a half beyond its close. Then the idea grew of a twelve-months extension beyond January, 1916, while various other periods, both shorter and longer, were urged. As the debate waxed warm and criticisms (as for instance from the *Times* and Sir Edward Carson) fell heavily upon the ministry, the desirability of conciliation became apparent, and Asquith announced that an extension of eight months would serve as a reasonable compromise, and in this form the act passed.[52]

[51] For examples of such protests, see London Daily *Times*, Dec. 4. 1915, p. 9; Dec. 9, p. 9; Dec. 10, p. 9 and p. 12. For Carson's views, see *Times*, Dec. 13, p. 9.

[52] Parliament and Registration Act. 1916, 5 & 6 Geo. V, ch. 100. 27 Jan. 1916. Section 2 of the Act continued in force the existing register of electors until parliament should provide special registers, or otherwise direct. The intention of the government was to provide special registers in time for the next general election, enabling soldiers and sailors to qualify and be allocated to particular constituencies. Provision was made in Section 3 for compensating Irish officers for temporary loss of emoluments. For the debates see 76 *H. C. Deb., 5th ser.*, cc. 1946–2028; 77, cc. 59–87, 520–536; 20 *H. L. Deb, 5th ser.*, cc. 819–850; 931–945.

The existing parliament would thus be kept alive until the end of September, 1916, but as a general election was not even then contemplated a further extension became necessary in August. Plans for altering the franchise to suit the principle of "fit to fight, fit to vote," and to allow for polling at the front were urged but wisely dropped, and an act was carried on August 23 which extended the life of parliament for seven months—that is, to the end of April, 1917. The franchise was to remain unchanged but a new register was to be prepared so as to preserve the vote for any electors within the country who might be absent from home on war duty. An amendment provided that if a dissolution should occur before the new register could be put into force the parliament elected on the old basis should not last longer than two years. In a significant speech Mr. Asquith "assumed" that a general election in time of war would be a calamity. Neither France nor Italy, he said, contemplated such a contingency, and neither ought Britain to do so.[53] This plainly indicated that another extension would be made if the war were still continuing in April. Throughout the debate the

[53] It may be of value to note recent action in other countries touching wartime elections. The parliamentary election of December 19, 1915 in Greece showed how unrepresentative an election (even in a neutral state) can be in the midst of a war. The followers of Venizelos absented themselves from the heavily-guarded polling places, and less than a third of the normal vote was cast. To avoid an election in 1916 in Canada, the British North America Act was recently amended so as to extend the term of the Dominion Parliament one year. This was done in response to an address from the Canadian to the British Parliament. (An Act to amend the British North American Act, 1867.—1 June 1916. 6 & 7 Geo. V, cap. 19.) In France there will be no elections either to the Senate or to the Chamber of Deputies until the close of the war. The law reads: Les opérations de revision des listes électorales pour l'année 1915 sont ajournées jusqu'à la cessation des hostilités. Pendant la même période et jusqu'à ce qu'une loi spéciale ait autorisé la convocation des collèges électoraux, il ne sera procédé à aucune élection législative départementale, communale ou consulaire. *Journal official de la republique française,* Dec. 25, 1914, p. 9338. Furthermore in 1915, the elections of various local and colonial officers of the French government were suspended until a date to be set after the war. *Journal Officiel,* pp. 113, 2147, 2430, 3794, 7031. Moreover, in 1915, acts of the British parliament had been passed to render unnecessary the reëlection of members of the house of commons on acceptance of office (5 and 6 Geo. V, ch. 50), and to postpone elections of local authorities (5 and 6 Geo. V, ch. 76).

prime minister manifested indifference as to the length of the extension, but thought that some date should be fixed even though it might later be set aside.[54]

At first sight the legislation of 1916 might seem an undoing of an essential feature of the parliament act of 1911, for the shortening of parliament had been intended as an offset to the increased power of the lower house. It is too early to conclude, however, that the permanent shortening of parliament ceases to exist as a safeguard. The emergency measures of the present year are but temporary, and serve not to override a safeguard, but to get rid of a hindrance. Moreover the lords, who by the Avebury amendment of 1911 had become the special guardians of this portion of the constitution, agreed to the extension, so that no menace of single chamber legislation seems to be involved.

In glancing over the acts we have studied, it is striking to observe how great constitutional changes have incidentally left their impress upon legislation touching the duration of parliament. During the violent upheaval of the Puritan revolution, when the whole constitution was being thrown into the scrap heap by the leaders of the parliament and the army, a triennial act was produced which, by its compulsory clauses, made the process of summoning parliament independent of the crown. In the full swing of the royalist reaction an obliging parliament repealed the obnoxious statute, adding a clause politely beseeching that parliaments be summoned at least once every three years. After the crisis of the Whig revolution had been faced and passed, and the popular will expressed through parliaments had been vindicated at the expense of the prerogative, the triennial act of 1694, with the reluctant royal consent and with a revenue bill as its companion, typified the new supremacy which parliament had achieved. These three measures were by-products of controversies that concerned the constitutional relations between parliament and the crown. In the reign of the first George, however, royalty was without force, while under the

[54] My chief source for this recent legislation is the London Daily *Times*.

fifth George royalty had long been reduced to the position of a "glorified rubber stamp," and England was, as Tennyson said, a "crowned republic." The acts of 1716 and 1911, therefore, did not concern the position of the king with reference to parliament, but the position of parliament in relation to the people and also to parties, for party government was now the controlling factor in public affairs. The septennial act, passed, as it were, under the party lash, and inspired by almost purely partisan motives, appropriately represented the dominant influence in modern politics. Then finally, the quinquennial provision of 1911, an important feature of a radical constitutional alteration, took into view the relation of lords to commons, and of party administration to the people, and registered an unwillingness to extend too far the authority of a party cabinet supported by an obedient following in the popular house. Though temporarily set aside in a world-shaking war, it is to be presumed that this measure still has vitality.

All such statutes are conditioned by the fundamental character of the English constitution, which, after all does not contemplate a strictly constitutional, but rather a parliamentary, government, inasmuch as no constitutional convention, (or similar authority representing the *state* as distinguished from the *government*), can interpose its will between the parliament and the people. As Mr. Asquith declared in 1911: "The moment you except from the omnipotence of parliament certain categories of legislation, that moment you are introducing of necessity an outside authority to determine whether or not any particular act of parliament is valid."[55] This is, in truth, the crux of the whole question. Whenever the constitution is to be altered, even as regards parliament itself, the agency for making the alteration is the parliament. Though in a sense the creature of the constitution, the parliament is also the creator and amender of the constitution.

[55] London Weekly *Times*, July 3, 1911, p. 8.

# NEED FOR A MORE DEMOCRATIC PROCEDURE OF AMENDING THE CONSTITUTION[1]

SEBA ELDRIDGE

That final legislative authority in this country is lodged in the letter of a constitution that is amended with the greatest difficulty, and with a supreme court which is entirely independent of electoral control has become a commonplace of political discussion.

To quote Professor Goodnow: "Acts of congress and of state legislatures are declared to be unconstitutional . . . . . because they cannot be made to conform to a conception of the organization and powers of government which we have inherited from the eighteenth century;" and Dr. Blaine F. Moore: "If we may judge from the decisions based on the due process clause in the fourteenth amendment and applying to the States, the court has it in its power to make the similar clause in the fifth amendment cover practically all federal legislation dealing with new problems concerning which there are few or no precedents. If the court does make this entirely possible extension of its power, then the legislation dealing with the more recent and pressing questions is under the control of the popularly inaccessible justices of the supreme court."

Both these quotations are from studies published before the adoption of the sixteenth and seventeenth amendments, but they are only a little less true now than then, as an analysis of the history of those amendments will show.[2]

A generation elapsed after the income tax law was declared unconstitutional before the amendment specifically authorizing

[1] A paper prepared for the annual meeting of the American Political Science Association, December, 1915.

[2] Much of the argument which follows is taken from an article by the present writer in *Equity* for July, 1915.

a tax of this nature was adopted. The law was passed in response to an overwhelming demand on the part of the country for a redistribution of taxation burdens as between the agricultural classes on the one hand, and the manufacturing and commercial classes on the other. The income tax was to provide the revenue which would be forfeited under the new tariff schedules that were demanded. Invalidation of the income tax law not only prevented this transfer of taxation burdens, but had a much more important result which has not been generally recognized. The period from 1895 to 1913, when the levy of an income tax was prohibited, was a crucial one in the country's industrial development. The relative status of agriculture and manufacturing was being defined. It was being determined whether we should be predominantly an agricultural or a manufacturing nation. Any change in the fiscal policy of the government was bound to affect industries of one or the other class. The income tax decision, by altering this policy, affected vitally and permanently the country's industrial development. The result is, we have today an essentially different organization of industry from what we would have, had the income tax law stood. We are less an agricultural and more a manufacturing nation because of that decision and the impracticability of speedily reversing it. This may be well, but it was not of our choosing.

Now Professor Seligman has demonstrated pretty conclusively that the term "direct taxes," around which the controversy over the law centered, was not intended by the framers of the constitution to prohibit the apportionment of taxes according to wealth as well as according to population. The word "direct" was introduced to settle the vexed question of representation and not any dispute over taxation. An erroneous interpretation of a constitution drafted before there were any railroads or any factory system was permitted to modify the whole future course of our industrial development! The reply to those who claim that the defeat of the popular will in this instance was only temporary, is that the measure invalidated in 1895 could not be reënacted in 1913, for that decision had done its work and no new income tax could undo it.

The adoption of the seventeenth amendment is just as flimsy a proof that the Constitution can be adapted to changing conditions, as should be obvious when we consider that not only was this amendment not adopted until eighty-seven years after it was first proposed, but not until long after sentiment was practically united in its favor, and the States had found extra-legal means of accomplishing the same purpose. The adoption of this amendment was, therefore, but little more than the formal ratification of an irregular procedure of electing United States senators by popular vote established in default of a regular constitutional procedure. It has the same sort of significance that the adoption now of an amendment requiring the President to be elected by popular vote would have. But, were it possible to measure the social results of the postponement of this change, we could not delude ourselves into the belief that in this second instance there had been no permanent defeat of the will of the people.

In our view it cannot be seriously maintained that features of a constitutional system which permit such defeats of popular purpose are to be supported by advocates of democratic government.

The same tortuous course taken by the sixteenth and seventeenth amendments probably awaits other reasonable proposals for change. Take, as instances, the two amendments favored by Mr. Taft, one providing for a national budget, the other for a single term for the President. Nothing can be more obvious than the impracticability of securing amendments of this nature. Congress would never consent to so great a diminution of power as an executive budget would represent, unless forced by an almost unanimous public opinion to do so; nor, in view of the President's great influence with congress, is it easy to imagine both houses of that body passing by the requisite two-thirds majority an amendment limiting his tenure of office to one term. Certainly a President who supported this change during his first term would be too saintly a character to remain long on this earth.

The truth is, when one more than one-third of one house of

congress can prevent the proposal of amendments, and one more than one-fourth of the States can prevent the ratification of amendments that may be proposed, an obstructive minority rule in this matter is the fact, and not a constructive majority rule. This truth becomes pathetic, when the jurisdiction of congress or of the States is in question, and these creatures of the Constitution must pass on propositions to redefine their own functions.

Yet despite the obviousness of this situation, the National Association for Constitutional Government, the "anti" of the movement for a democratic amending procedure has the hardihood to assert that "it is yet to be demonstrated that there is any truly beneficial social reform that is prohibited or obstructed by the national Constitution!" The really tragic aspect of the situation is not that one or a number of reforms may be obstructed by the Constitution, but that the venerable document has, through the connivance of forces both sinister and sincere, gotten itself regarded as a sort of categorial imperative not to be challenged.

If it is with great difficulty that single amendments to the Constitution are secured, no way at all could be found of revising the Constitution as a whole, or substantial portions of it, should that be deemed necessary. Two-thirds of the state legislatures would never call for a convention in the identical terms that would be required for effective action; and particularly would they not call for a convention to propose a general revision of the Constitution. Apart from the fact that they would be too interested a party to favor a general revision, it could hardly be expected that, independently of each other, they should one by one, up to two-thirds their number, agree on a convention for general revision. It is too large a proportion of so great a number of independent bodies to require for the initiation of amendments wherein their own status would be reviewed and might be altered. It would be a bold congress that would propose a general revision or even a revision of considerable sections of the Constitution. Should any congress be disposed to do so, it would, like the state legislatures, be too interested a party to propose an impartial revision.

This question of general revision is far from being an academic one. From the standpoint of present public opinion on political and economic questions, there is the greatest need for a general revision of the Constitution. The doctrines of property rights and of states' rights underlie the entire Constitution, tie it together, make of it an organic whole. No one would deny, I think, that these doctrines would be revised were we now to draft a constitution. The far-reaching effects of such a revision would also be admitted. Yet under our present amending procedure, a genuine revision of those doctrines cannot be attempted. We are confined instead to a guerilla warfare for or against them, as seems to isolated individuals or groups to be desirable.

In the radical reconstruction of world politics now going on is to be found an even more imperative reason for demanding a genuinely representative control of our political development. Without it our country cannot play the rôle in this greatest of all movements which it should be both our duty and our privilege to play.

We can never be secure in a representative control of our political affairs without an electoral control of our constitutional policies. Could we be assured that the principles adopted by the supreme court would, for an indefinite period of time, meet with the sanction of public opinion, it would still be essential that a more dependable machinery be devised for giving expression to the will of the nation, for no one would claim, I think, that that body is so constituted as to guarantee for it a permanently representative character. Still less could it be claimed that the letter of a constitution drafted a century and a quarter ago when we were a small agricultural people, and with only a handful of amendments adopted since that time, will be representative of our multifarious political interests in the new era opening before us.

A more democratic procedure of amending the Constitution must be established. In the words of the committee on the federal constitution, "Control of the organic law by the people means the power to revise it in any way and to any extent they

desire. It means the power to amend the written Constitution, and the meaning of the written Constitution as judicially interpreted, in part or in whole as the people may determine. This will require a procedure of revision that will provide for the initiation and adoption of particular amendments as they may be required, without more delay than that needed for wise deliberation; and, when necessary, for recasting the Constitution as a whole. For the people to have effective control over the machinery of government, at least one process of revising the Constitution must be independent, so far as the proposal and ratification of amendments are concerned, of any organ or organs of government already constituted."

It need scarcely be added that any new procedure, to fulfill its purpose, must be such as to invite the fullest and freest discussion of fundamental political questions. Only thus can that inhibition of political thought of which Professor Zueblin speaks be removed.

# AMENDING PROCEDURE OF THE FEDERAL CONSTITUTION[1]

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## PROPOSED AMENDMENTS SINCE 1889

The development of government on American soil presents, as one of its features, the embodiment in its fundamental law of provisions for its modification. The early colonial charters kept alive the fiction that a form of government once established was supposed by its creators to last forever.[2] Only the slow change of custom or the violence of a revolution could modify or destroy such a system of government, except, as in the case of the charters granted by the crown, a modification came as a consequence of the exercise of the royal prerogative.

In the Frame of Government drawn up by Penn and his colonists in 1683, appeared an amending provision for the first time in the history of written constitutions; and while all subsequent Pennsylvania charters contained a similar provision, the other colonial charters presented no method whatever for their alteration. Prior to the drafting of the Constitution of the United States, however, a method of amendment was embodied in the state constitutions of Delaware, Pennsylvania, Maryland, Georgia, Vermont, South Carolina, and also in the Articles of Confederation.

Mindful of the fact that with the lapse of time and changing conditions would arise a demand for altering their work, the framers of the Constitution of the United States made pro-

[1] A paper prepared for the annual meeting of the American Political Science Association, December, 1915.

[2] Charters of Mass. Bay and colony of New Plymouth granted by Charles I, 1629; Charter of Mass. Bay granted by William and Mary, 1691. F. N. Thorpe, *American Charters and Constitutions*, vol. III, pp. 1842, 1852, 1877.

visions in article V of our fundamental law, that congress by a two-thirds vote of both houses, or a convention called by congress upon the request of the legislatures of two-thirds the States, shall propose amendments which shall be valid as part of the Constitution, when ratified either by the legislatures of three-fourths the States, or by conventions in three-fourths the States.

The fact that over two thousand amendments to the Constitution were proposed during the first century of its history, as shown by Professor Ames, attests to some degree the wisdom and foresight of the framers in providing for the amendment of their work; but on the other hand, the fact that only fifteen of these were adopted, has hardly met the expectations of the framers themselves, and has caused students of our system of government to decry the method prescribed as so difficult as to make amendment possible only in times of great crises. Madison believed the method provided, "guarded against that extreme facility which would render the Constitution too mutable; and that extreme difficulty which might perpetuate discovered faults." Hamilton trusted that time would bring the work of the framers to perfection, and that the feeling of inconvenience must correct the mistakes into which they inevitably fell in their first trials and experiences in the balancing of a large State on general laws.

The same tendency to amend the federal Constitution prevailed during the first quarter of the second century, as has been shown to have existed during the first century of its history. That many changes in the form and also in the powers of the government have been contemplated, is apparent upon an examination of the almost one thousand proposals for amendment, officially presented in congress, during the period from March 4, 1889, to March 4, 1913.

Among the changes in the form of the legislative department of the government, one providing for the abolition of the senate and thus making congress a unicameral body, although proposed only once, is of interest. Propositions for changing the time of commencement and termination of the congressional

term and of the annual meeting of congress have been of more frequent occurrence than any other affecting congress as a whole, while the granting of representatives in congress to the District of Columbia, and the adoption of the English system of permitting members to occupy cabinet positions, have on several occasions been the subject of amendments proposed.

Efforts to fix in the Constitution the number of representatives in the house have been the occasion for the proposal of several amendments. The term of representatives has been a subject of much criticism; twenty-six amendments having been proposed providing for either a three or a four year term.

Amendments providing for qualification of electors of representatives, as well as the regulation of their election by the federal government rather than by the State have been urged on several occasions; in most cases, however, in connection with the efforts to secure the direct election of senators. Two amendments proposed embraced in their provisions the recall of representatives.

The senate is the only department affected by amendments during this period. By the adoption of the seventeenth amendment, the election of its members was taken from the state legislatures and placed with the people. Aside from the proposed amendments providing for the direct election of senators, few changes in the senate were seriously considered. Four amendments providing for terms of four and eight years, and two others providing for basing the States' representation in the Senate on its population, were proposed.

The large number of amendments proposed providing for changes in the method of electing the President and Vice President, the time of the commencement and termination of the presidential term, the length of the presidential term, together with provisions fixing the number of terms and also the presidential succession, indicates a wide-spread dissatisfaction with the executive department. The senate on three occasions passed a joint resolution providing for a change in the time of inaugurating the President, and on another occasion passed one limiting the President to one term of six years. Of the powers granted

the President in the Constitution, the veto power has called forth the greatest number of proposals for alteration. That he be given the power to veto separate items in appropriation measures has been urged in over a dozen proposed amendments. On the other hand, attempts to diminish the power of his veto have been made in proposed amendments providing for the passage of vetoed measures by a majority vote in both houses. The appointing power of the President would be materially reduced by the adoption of several amendments proposed during this period, providing for the election of judges and other appointive officials in the department of justice, members of the cabinet, collectors of customs and internal revenue, and postmasters.

The judiciary has been attacked at many points. In summing up the proposed amendments affecting this department, one can not avoid the conclusion that the general purpose is to strip it of its independence of responsibility to the people. Provisions fixing the number of judges on the supreme court; for the election of judges by the people; for a term of office of from eight to twelve years; for removal by concurrent resolution of congress, or by a simplified method of impeachment, were embodied in the amendments proposed. As to the jurisdiction of the courts, the efforts to amend, although few, have provided for its limitation.

By far the greater number of amendments proposed have related to the powers of the government. Attempts to amend the financial, commercial, territorial, and war powers have been made with great frequency. Provisions for apportioning direct taxes among the several States, according to the valuation of property subject to taxation in the several States; for an income tax without apportionment according to population, as finally embodied in the sixteenth amendment; a corporation tax; removal of the prohibition of an export tax; and restrictions on private or special appropriation legislation, are the changes most frequently urged in regard to the financial powers.

The development of many trusts and monopolies beyond the control of the States during this period created a demand for their regulation by the national government. Amendments con-

ferring power on congress to regulate or suppress trusts and monopolies, as well as power to incorporate or license corporations engaged in interstate business, were proposed as a means of bringing about a solution of this recently developed problem.

Provisions restraining the government in the annexation of territory and in the admission of new States into the Union, appeared in several amendments proposed during the rise of anti-imperialism at the close of the last century.

Few amendments touching the war power were proposed. One is of interest, in that it provided for the abolition of the army and navy; others provided for limitations on the granting of pensions.

Frequently amendments relative to the relation of the government to the individual were proposed. Amendments empowering congress to regulate marriage and divorce; granting suffrage to women, repealing the fifteenth and part of the fourteenth amendments; specifying certain qualifications for citizenship; defining treason; limiting private fortunes; and providing for the punishment of certain crimes, constitute the greater number in this class.

The desire to extend police power to the national government is seen in over fifty amendments providing for the prohibition of bigamy and polygamy; the protection of labor by the establishment of uniform hours of service, and employer's liability; government insurance; prohibition of lotteries; and the suppression of the liquor traffic.

That the recognition of God should be included in the preamble to the Constitution was the object of ten amendments proposed. To guard against sectarian legislation over a dozen amendments were proposed forbidding the granting of any aid to sectarian institutions. Provision for the establishment of a national free school system followed in several cases the provision for forbidding aid to sectarian institutions.

Several efforts were made to engraft the initiative and referendum, as well as the recall, on our system of government by constitutional amendment. Even the process of amendment did not escape attack. During the latter part of this period while

the forces were gathering for the passage and adoption of the sixteenth and the seventeenth amendments, provision for a simpler method of amendment appeared in several proposed amendments.

Taken as a whole, the proposed amendments to the Constitution afford an index of real problems confronting the government and the people. While in many cases the occasion for the change proposed is trivial, on the other hand many amendments proposed record the progress of great movements begun in an earlier period. In this latter group may be placed the movements for the direct election of senators, the direct election of judges, woman suffrage, uniform marriage and divorce laws, regulation of the liquor traffic, changing the time of the commencement and termination of the congressional and presidential terms, and the length of the presidential term as well as the number of terms. Problems more peculiar to this period may be seen in the proposed amendments providing for an income tax, prohibition of bigamy and polygamy, limitation on the acquisition of non-adjacent territory, regulation of trusts, and protection of labor.

More than 700 resolutions providing for 977 amendments were introduced in congress during this period. Two of these passed both houses of congress and were ratified by three-fourths the States and became a part of the Constitution. Ten others passed one or the other branch of congress;[3] five providing for the direct election of senators, two changing the commencement and termination of the presidential and congressional terms, two providing for the succession to the presidency, and one limiting the President to one term of six years.

Several conditions characteristic of this period served to develop the large majorities necessary for amending the Constitution. The accumulation of large fortunes, and the formation of corporations and trusts with their constantly increasing influence in the state as well as in the national government, created a widespread feeling of hostility on the part of the great mass

[3] Five passed the senate and five the house.

of the people. The problems of taxation and representation so prominent in the convention in 1787, came to the front again in this later period as a result of the economic and social conditions arising from our industrial development since the Civil War. Both the state and the national legislature became battlegrounds where the people arrayed themselves against special privilege. The results of this conflict were the gradual advance of the people to power and the enactment of laws for their welfare.

The incorporation of the income tax provision in the revenue measure of 1894 was but a part of this movement. A shifting of a part of the burden of national taxation from the consumer to the income of the rich, had been demanded since 1884 by minor political parties whose strength lay with the farmers of the West and South and the laboring classes of the large cities. By 1894 this Populistic scheme fitted in well with the Democratic party's anti-protection policy in framing their revenue measure, but this "communistic march," as Mr. Choate characterized it before the supreme court, was stayed the following year by that body in declaring the income tax unconstitutional in the case of Pollock vs. Farmers' Loan and Trust Company.[4] The advocates of an income tax, however, had no thought of quitting their attack on wealth because of the court's decree, but immediately set about to remove the constitutional barrier in the way. The return of the Republican party to office in 1897, and the restoration of the protective tariff, removed the immediate need for new sources of revenue, while the public interest in the national problems connected with our war with Spain, diverted for a time the assault on special privilege. The formation of trusts and the gigantic financial power created by the accumulation of capital immediately following the war, revived the spirit of dissension on the part of the consumers not benefited by protective tariff to such an extent that its presence as a real force, demanding a tax on incomes to the end that wealth might bear its proportional share of the burden of taxa-

[4] 157 U. S., 429; 158 U. S., 601.

tion, made itself felt even in the Republican party. The slight concession in the Republican platform of 1904, to the effect that protection should be adjusted to the difference in the cost of production at home and abroad, the recommendation of a tax on incomes by President Roosevelt in his annual messages of December 3, 1906, and December 2, 1907, when viewed in the light of subsequent events, indicates that a portion of the Republican party, at least, had recognized the presence of a demand on the part of a considerable portion of the people for a readjustment of the burdens of taxation. The presidential campaign of 1908 presented the issue between the people on the one hand and capital and special privilege on the other, in a more definite form than it had hitherto taken in national politics, and indicated the national strength of the forces favoring an income tax. Although the Republican party did not include a plank advocating an income tax in its platform in 1908, as did several of the other parties whose combined strength at the November election proved to be only slightly below that of the Republican party,[5] the pledge of the party to a revision of the tariff in a special session of congress showed its apprehension of the growing demand for such a tax. The recommendation by President Taft in a special message to Congress, June 16, 1909, that an amendment to the Constitution be proposed providing for an income tax and the subsequent introduction of a resolution to that effect, from the committee on finance by Senator Aldrich of Rhode Island, on June 28, 1909, was but the surrender of the last stronghold of capital and special privilege that stood in the way of this popular movement.

The amendment providing for the election of United States senators by the direct vote of the people is a result of the same movement on the part of the people to more carefully safeguard their interests by changing the machinery of their government so as to make it function more closely in accord with the popular will, rather than to change its function to meet a certain

[5] In 1908 the Democratic, Socialist, Prohibition and Independence parties demanded an income tax. The total vote polled by these four parties was 7,208,-127; while the Republicans polled 7,679,006 votes.

popular demand, as was the case in the sixteenth amendment. Although the movement for amending the Constitution so as to place with the people the power to elect United States senators, had its inception more than three-quarters of a century before the final adoption of the seventeenth amendment, it was not until a great reaction against representative government in favor of popular government occurred, that it was assured success. The arguments advanced in the earlier period of the movement, that the election of senators by the state legislature was undemocratic as a method and evidenced distrust of the people, and that their choice by the people would be more consistent with the genius of American government, did not appeal with sufficient force to congressmen or to the people to produce any concerted action.

The stress of conditions in the West which gave rise to the Populist movement in the early "nineties," and which failed to find relief by means of national legislation either through the free coinage of silver or an income tax, forced the newly organized party to turn to the state legislatures for relief. Immediately there began an assault on every piece of political machinery that offered resistance to the legislation they proposed, with the result that the initiative, referendum and recall were instituted as devices to strip representative government of its power to thwart the popular will. Such were the means by which the people eventually came to their own, not only in the West, but in every section of the Union where a corrupt or boss-ridden government failed to respond to popular demands.[6] An amendment to the Constitution providing for a still further application of this popular control of the machinery of government appealed to the people now not so much as a logical development of democracy, but with far greater force as an expedient method whereby they could more completely exercise control over their state legislature, as well as secure a more direct influence in the United States senate.

[6] For a brief account of this movement, see Charles A. Beard, *Contemporary American History*, pp. 283–288.

The adoption of the seventeenth amendment was the result of a force characterized by Senator Borah as absolutely resistless, a force borne on, not by a tide of popular hysteria, but "a tide of the earnest effort of the American people to make what free government is destined to be in the last analysis—popular government."[7]

The number of amendments proposed in each congress has gradually increased during this period from sixty-six in the 51st Congress (1889–1891) to one hundred and thirty in the 62d Congress (1911–1913), providing in the latter case for some forty changes in the Constitution. In all, over twenty-seven hundred proposals to amend the Constitution have been made during the first hundred and twenty-four years of its history.[8] Out of this large number of proposals only seventeen have become a part of the Constitution. Upon considering the large number of amendments proposed and the exceedingly small proportion adopted, the question immediately arises whether the conditions imposed by the convention of 1787 relative to amending the Constitution will not eventually become so onerous as to overtax the patience of the American people. The adoption of the sixteenth and seventeenth amendments has no doubt done much to dispel the long standing notion that our Constitution can be amended only in times of great crises, but the popular demand that secured the adoption of these two amendments was not satisfied with this achievement or with the hope of securing the adoption of others of a similar character.[9] The method of amendment as provided in article V of the Constitution loomed

[7] 61st Cong. 3d Sess., Jan. 19, 1911. *Record*, p. 1107.

[8] 1736 were proposed during the first century of the Constitution, see Ames, *The Proposed Amendments to the Constitution of the United States during the First Century of its History*; 977 proposed during this period, 1889–1913. These numbers are taken from the calendars of amendments proposed during these two periods. Professor Ames' contains many amendments inserted after the 1736 were compiled, which when added to the latter number makes the total number in his calendar 2023. It would thus be more accurate to place the number of amendments proposed during the period from 1789 to 1913, at 3000.

[9] For example, proposed amendments providing for direct election of President and Vice President, election of judges, election of postmasters, recall of representatives, initiative, referendum, woman suffrage, protection of labor.

up before the advocates of popular government as an ever present obstacle in their way, and it was against this stronghold of the opposition that they eventually directed their attack. Evidence of this phase of the movement made its appearance late in this period, during the 61st and 62d Congresses (1909–1913) when six amendments were proposed providing for a simpler method of amendment. During the 63d Congress, which, however, lies beyond the period under consideration, no less than ten such proposals were made.[10]

Considering the fact that during the first century of the history of the Constitution only three proposals were made to change the method of amending the Constitution,[11] this later phase in the development of the movement for popular government bids fair to produce results of far-reaching importance.

[10] 63d Cong., 1st Sess. S. J. R. 9, 20, 24, 26; H. J. R. 60, 95. 63d Cong., 2d Sess. H. J. R. 220, 221, 319. 63d Cong. 3d Sess. H. J. R. 422. S. J. R., 26 was reported adversely from the Committee Judiciary. Feb. 5, 1914, Mr. Cummins of Iowa submitted the report of the minority in which, with the exception of several points, Ashurst of Ariz., Walsh of Wash., Borah of Idaho, Nelson of Minn., and Overman of N. C. concurred. See S. Report 147.

[11] See Ames, *The Proposed Amendments to the Constitution of the United States during the First Century of its History*, pp. 292–293.

# THE JUDICIAL VETO AND POLITICAL DEMOCRACY[1]

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Since the United States has theoretically no police power, and since the federal Constitution is essentially a political document, the national judiciary must in the main use political clauses of the organic law as the basis for nullifying statutes. While clauses of this nature are thus frequently made to serve as a basis for the decisions, the great majority of statutes nullified by the United States supreme court have pertained in fact to economic and social rather than political matters.[2] While the court has nullified in all about thirty-three federal statutes, the scope of this discussion will permit of a summary only of the more important statutes which have directly affected political questions.

The political principle of separation of powers has afforded the basis for the nullification of seven federal statutes.[3] All these decisions have, however, affected the power and jurisdiction of the court itself; and in every jurisdictional case, with but one unimportant exception, the court has refused to accept authority which congress attempted to bestow upon it.

While the court has thus almost uniformly limited its authority in the jurisdictional cases, in one instance the principle promulgated was most momentous—the one laid down in Marbury vs. Madison. The source of the judicial power to nullify an act of a coördinate legislature will not be discussed here, but even recognizing the existence of such power, the use of it in

[1] A paper read at the annual meeting of the American Political Science Association, December, 1915.

[2] *E.g.*, Employers' Liability Cases, 207 U. S. 463; Adair vs. U. S., 208 U. S. 161; Keller vs. U. S., 213 U. S. 138.

[3] U. S. vs. Todd, 13 How. 52; Marbury vs. Madison, 1 Cr. 137; Gordon vs. U. S., 2 Wall, 561 & 117 U. S. 697; The Alicia, 7 Wall. 571; U. S. vs. Klein, 13 Wall. 128; U. S. vs. Evans, 213 U. S. 297; Muskrat vs. U. S., 219 U. S., 346.

this particular instance was not necessary. It would seem clear that the section of the judiciary act nullified could have been so construed as to save it. The promulgation of this great doctrine in this particular instance seems to have been gratuitous on the part of Chief Justice Marshall.

The maintenance of the proper relations between the national and state governments is also a political concept which has served as the basis for the nullification of twelve United States statutes.[4] These cases, with one exception, can be dismissed with the explanation that the decisions are not important for the present discussion, or that they follow decisions previously made or principles which would seem quite obvious or necessary. The exception (the civil rights cases), is of very considerable importance. According to this decision, congress was given no direct positive power by the fourteenth amendment but must content itself with corrective legislation which in practice amounts to prescribing modes of appeal from the state to the federal courts and by this means check prohibited state action. "This is the legislative power conferred on congress and the whole of it." Because of of this interpretation the federal judiciary exercises practically the whole of the power conferred on the United States government by the fourteenth amendment. Since much of the newer state social and industrial legislation is contested under this amendment the importance of the decision can scarcely be overestimated.[5]

In the Dred Scott case,[6] the court took up a question which at the time was of vital political importance and nullified in effect the Missouri Compromise, though the validity of this statute was not directly involved. The court voluntarily overturned what was considered, by the North at least, a fun-

[4] U. S. vs. Dewitt, 9 Wall 41; The Collectors vs. Day, 11 Wall. 113; U. S. vs. Railroad Co., 17 Wall. 322; U. S. vs. Reese, 92 U. S. 214; U. S. vs. Fox, 95 U. S. 670; Trade Mark Cases, 100 U. S. 82; U. S. vs. Harris, 106 U. S. 629; Civil Rights Cases,109 U. S. 3; Baldwin vs. Franks, 120 U. S. 678; James vs. Bowman, 190 U. S. 127; Employers' Liability Cases, 207 U. S. 463; Keller vs. U. S., 213 U. S. 138.

[5] Other cases, coming under this classification, are omitted because they have but little bearing on political matters in effect, though they may have been based on political clauses of the constitution.

[6] 19 How. 393.

damental compact on the slavery question. Because of the war which followed, the decision had but little permanent effect, but it was a most ambitious and unsuccessful attempt on the part of the court to solve a live political issue.

The court again passed on a political question in determining congressional power in relation to paper money. Again the court limited legislative authority and again found itself on the unpopular side of a political question. Both congress and the people refused to regard the issue as settled and the decision was soon overturned by effecting a change in the personnel of the court.[7]

Another instance of the court championing the unpopular side of a contemporaneous political question is furnished by the income tax cases.[8] Although the court had previously[9] upheld a federal income tax, these later decisions made such a tax economically impossible until it was provided for by a constitutional amendment.

It will thus be seen that in the three instances in which the court passed on important and national political questions it failed in each case to settle the issue involved, and in all instances its decisions were overcome, one by war, one by a change in the personnel of the court, one by a constitutional amendment. In the latter case an income tax which seems to be generally approved was delayed for about twenty years.

The United States supreme court has nullified about 250 state statutes and municipal ordinances. In a considerable number of instances these statutes conflicted with political clauses of the Constitution, but in surprisingly few cases have the decisions mainly affected political activities of the States. In nearly all instances they pertain to economic and social matters involving property rights rather than political affairs. It is true that some of these became involved in party politics and were

[7] Hepburn vs. Griswold, 8 Wall. 603; Legal Tender cases, 11 Wall. 682; Juillard vs. Greenman, 110 U. S. 421.

[8] Pollock vs. Farmers Loan & Trust Co., 157 U. S. 429 & 158 U. S. 601.

[9] Springer vs. U. S., 102 U. S. 586.

matters of wide popular discussion, but this was not because they concerned the political activities of the States affected.[10]

The supreme court, however, has recently annulled two state statutes which have political significance. One of these is the Arizona law regulating the employment of aliens (Truax vs. Raich, decided October 15, 1915), and the other, the grandfather voting clause in the Oklahoma constitution. Possibly the only objection to this last decision is that it was not made years ago.

Thus, in most cases in which the national supreme court has judicially vetoed state statutes the issues involved have not been political in the proper sense of the word, and there would seem to be little cause of complaint regarding the court's decisions so far as this particular phase of the question is concerned.

In regard to state courts and their power to nullify state statutes and local ordinances the question is not so clear. At various times the courts have checked the legislatures in their attempts to regulate some phase of political activities or to introduce political reforms. In some instances the States have been forced to abandon their attempts or adopt constitutional amendments.

One of the earliest attempts to guard the ballot box in this country was by the adoption of registration laws and these now exist for practically all cities and towns of any size. There has not been any serious constitutional objection to these statutes though in a few cases such laws were judicially nullified on their merits.[11] A considerable number of technical difficulties have been encountered, the main objection having been that such laws increase the constitutional requirements for

[10] The taxing powers of the States have at times been checked and at other times regulated and the issues have become party issues. (See State Bank vs. Knoop, 16 How. 369, and the other Ohio bank cases.) Because of the interstate commerce clause the power of the States to regulate the liquor traffic has been interfered with and the issue again became partisan in some instances. It is also well known that the States have been constantly checked in their efforts to regulate common carriers and control their rates but the courts in their decisions on these questions are not passing on matters which are in themselves political.

[11] See White vs. Multnomah Co., 10 Pac. 484, (Oregon).

voting.[12] While these judicial objections have in some instances delayed such laws no serious difficulty has been encountered because of the attitude of the courts.

About twenty-five years ago a movement began which rapidly spread over the country and within a decade of its appearance the majority of the States had accepted it. This was the adoption of the Australian ballot. With but a few exceptions there was no judicial objection to this on its merits, though occasionally a statute in whole or in part was nullified because of technicalities.[13] To put this reform into effect required regulations of parties and thus both the courts and the people became accustomed to the legal recognition of parties and the way was paved for a more elaborate code of regulations later.

The next development in party regulation was the voluntary and then the mandatory direct primary.

Such legislation does not apparently conflict with the United States Constitution,[14] and with the exception of two States there has been but little difficulty with state constitutions.[15]

Two States, however, California and Illinois, have had serious difficulties with primary laws. California met its first obstacle in 1892 when part of an Australian ballot law was nullified.[16] A primary law enacted in 1895 was held void because it was legislation of a special and local nature.[17] Another act passed in 1897 was nullified because of registration difficulties. It was also judicially objectionable because the voter was required to express his intentions to support the candidates for whom he voted

[12] See Attorney General vs. Detroit, 44 N. W. 388, (Mich.). Dagget vs. Hudson, 3 N. E. 538 (Ohio); Dells vs. Kennedy,6 N. W. 246 (Wis.); State vs. Conner, 34 N. W. 499, (Neb.).

[13] Eaton vs. Brown, 31 Pac. 250, (Cal.); Moyer vs. Van Devanter, 41 Pac. 60, (Wash.).

[14] Kenneweg vs. Commissioners, 102 Md. 119.

[15] Nebraska (State vs. Drexel, 105 N. W. 174); North Dakota (Johnson vs. Grand Forks Co., 113 N. W. 1071), and Michigan (Dapper vs. Smith, 101 N. W. 60) and a few other states have had primary laws nullified in whole or in part, but these were because of technical difficulties or because of certain features of the statutes which did not affect the merits of the question.

[16] Eaton vs. Brown, 31 Pac. 250.

[17] Marsh vs. Hanley, 43 Pac. 975.

at the primaries.[18] In 1899 the legislature made another attempt and in order to meet the court's suggestion that the legislature probably could not require party tests these were entirely omitted. The court held that under this statute "the control of parties . . . . is taken from the hands of its honest members and turned over to the venal and corrupt of other political parties or of none at all." The law was void on this account and also because it was limited in its application to parties casting more than 3 per cent of the votes at the last regular election and no provision made for smaller parties to hold conventions.[19]

After these ill-fated legislative attempts, California adopted a constitutional amendment authorizing legislation on primaries.

Illinois had a somewhat similar experience. A general primary act was passed in 1905. This was declared void partly because of an improper delegation of legislative power to the county committees and partly because each candidate was required to pay a fee. This latter requirement, the court regarded as adding to the constitutional qualifications for office holding.[20] A special session of the legislature passed another act in 1906; and again it was held that the statute improperly delegated legislative power to the county committees. There were also technical difficulties with the cumulative voting system for legislators.[21]

In 1908 the legislature made another attempt, and once more there were fatal constitutional difficulties in regard to registration and also with the cumulative voting system.[22] Not yet discouraged, the legislature in 1910 passed two bills, one applying only to legislative elections and the other to the remaining elections. The first was again held void because of conflict with the cumulative voting provisions in the Constitution.[23]

[18] Spier vs. Baker, 52 Pac. 659.
[19] Britton vs. Board of Commissioners, 61 Pac. 1115.
[20] People vs. Election Commissioners, 221 Ill. 9.
[21] Rouse vs. Thompson, 228 Ill. 522.
[22] People vs. Strassheim, 240 Ill. 279.
[23] People vs. Deneen, 247 Ill. 289.

In regard to the regularity of the adoption of state constitutional amendments there has been some doubt as to whether this is a judicial question or a political matter outside of the province of courts. It is still an open question whether the federal judiciary will pass on this matter, and the issue has apparently been presented to it but a very few times. In an early case[24] it was held that the United States courts had no jurisdiction in such matters while another and later case maintains that they have.[25] It is now quite uniformly held by the state courts, however, that they will determine if the procedure prescribed by the constitution has been properly followed. The judges of some States have been very strict on this question, and hold that legislatures in submitting constitutional amendments have less procedural discretion than in passing ordinary legislation, since the amendment is really adopted by the people. Consequently in such instances the constitution must be more closely followed than in enacting ordinary statutes.[26]

The greatest judicial difficulty has been in the determination of just what part of a popular vote is necessary in order to adopt an amendment. This difficulty arises when the constitution states that an amendment shall be adopted when approved by a majority of voters, or by a majority of voters present and voting. The question is, does this require a majority of all votes cast at such an election or of all the voters of the State, or simply a majority of those actually voting on the amendment. The decisions on this point are not uniform, some holding to the first interpretation and some to one of the others.[27]

Indiana has had serious trouble with its amending clause because of judicial decisions. By holding that the constitutional clause requiring a majority of electors to ratify a constitutional amendment meant a majority of all electors and also by its con-

[24] Smith vs. Good, 34 F. R. 204.

[25] Knight vs. Shelton, 134 F. R. 423.

[26] See Livermore vs. Waite, 36 Pac. 424 (Cal.).

[27] Dayton vs. St. Paul, 22 Min. 400, Green vs. Board of Canvassers, 47 Pac. 259, (Idaho) holding a majority of votes cast on amendment to be sufficient. State vs. Brooks, 99 Pac. 874, (Wyoming) for opposite view. In this case about 37,000 votes were cast at the election, 12,000 for the amendment and 1300 against but the court held the amendment had not been adopted.

struction of the clause that when one set of amendments are pending, no others can be proposed, the state court effectively blocked constitutional changes for twelve years. An unimportant amendment did not receive a majority either for or against and consequently was, as the court's decision was understood, still pending and no new amendments could be proposed.[28] Then the legislature attempted to promulgate an entirely new constitution and the court prevented this.[29] After thus blocking all constitutional changes the court modified what was at least the popular construction of its decisions by holding that an amendment once failing to pass was no longer pending, and the way was opened for the proposal of other amendments.[30]

The federal judiciary will not interfere with the initiative and referendum in the States because of the republican form of government clause in the national constitution or apparently because of any other clause in that document.[31]

The state courts have held almost uniformly that the legislature may submit for approval an act local in its application to the people directly affected. This has long been a settled question and such referenda have encountered but little judicial opposition.[32] Tennessee seems now to be the only State in which the courts object to this.[33]

In regard to the state wide referendum the rule is the reverse. It has been so uniformly considered that this is an improper delegation of legislative power that but few States have attempted it unless it is specifically authorized by the Constitution. Where it has been attempted it has usually been held to be an unconstitutional procedure.[34] Vermont, however, in an early

[28] State vs. Swift, 69 Ind. 505; Re Denny, 156 Ind. 104.

[29] Ellingham vs. Dye, 178 Ind. 336.

[30] Re Boswell, 179 Ind. 292.

[31] Pacific States Telephone Co. vs. Oregon, 223 U. S. 118; Kiernan vs. Portland, 223 U. S. 151.

[32] Originally at least four States objected to this, Indiana, Iowa, California, Texas; but the decisions in these States objecting to the local referendum have been either definitely or practically over-ruled.

[33] Wright vs. Cunningham, 91 S. W. 293, (1905).

[34] See Barto vs. Himrod, 4 Seld. 483; Santo vs. State, 2 Iowa 165; State vs. Hayes, 61 N. H. 264.

case upheld it;[35] and Wisconsin holds that there is no essential difference between a local and general referendum and since the former is constitutional the latter is also.[36]

The recall of officers as applied to municipal governments seems to have been accepted as a matter of course. If the referendum applied locally is constitutional there seems to be no reason why the legislature may not have similar discretion in regard to the recall. In one State at least (Texas) it has been decided that the recall in local affairs does not conflict with either the state or national constitution.[37] The application of the principle to other than local officers seems not to have been attempted without specific constitutional authority.

The theory that a few men sitting in the higher courts of this country, largely beyond popular control, could by their power to nullify statutes, arrest political progress is not a very attractive one in a country whose government is supposedly based on democratic principles. But a study of the method and extent to which this power has been used, so far as it affects political matters, does not lead to any very alarming conclusions. In certain instances the use of this power has been objectionable. In Indiana constitutional progress was arrested for a number of years by judicial decisions which seemingly were not made necessary by the constitution. In Illinois and California primary laws were delayed, and in the latter State such a statute was only made possible by a constitutional amendment, yet California's organic law offered no more obstacles to this legislation than that of the other States where similar laws were upheld. Registration laws have been delayed in some instances largely because of technicalities but these delays have not been serious.

These instances are, however, exceptions rather than the rule. It can perhaps be safely said that the attempts of the States to regulate political matters and control political parties have generally gone without serious challenge on the part of their own judiciary.

[35] State vs. Parker, 26 Vt. 357.

[36] State vs. O'Neil, 24 Wis. 149; Smith vs. Janesville, 26 Wis. 291; State vs. Frear, 142 Wis., 320.

[37] Bonner vs. Belsterling, 138 S. W. 571.

The United States supreme court by its power to nullify laws has not interfered with the purely political activities of the States to any considerable extent. Its attempts to settle political questions of general importance have been, judging from results, unsatisfactory and ill-timed and have had little or no permanent effect.

The protests against the judicial power to nullify statutes have been caused by decisions affecting social and economic conditions rather than political matters.

Some of the reasons for this judicial liberality are apparent. One is that the courts are not bound by any ancient principles of common law. Political activity on the part of the people is relatively new or at least is new in its present form, and hence the courts are free to work out whatever principles may seem best unhampered by precedent. Another reason is that property rights are not directly involved and the judiciary is not bound by all its traditional respect for property rights. Still another reason is that many of the judges have at some time in their career been engaged in active politics and thus have a better understanding of political conditions than they seem to have of social and economic matters in some instances. Also, political matters have always been regarded as largely non-judicial and peculiarly within the province of the legislature, and the courts have assumed a more liberal attitude towards legislation of this character than toward that perhaps of any other.

# THE OPERATION OF THE DIRECT PRIMARY IN MICHIGAN

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The purpose of the direct primary, in so far as its purpose can be formulated in general terms, was to realize within the party organization, and especially in the process of nomination, accepted principles of democratic control. It is a commonplace, however, that political machinery must in the long run be judged not by its theoretical democracy but by its practical results. In a study of direct nominations, then, it appears most fruitful to examine the system in its operation rather than in its theory, and, whenever possible, to compare its working with that of the system which it supplanted.

Since 1901 the Michigan legislature has passed more than thirty acts, original and amendatory, relating to the nominating machinery. From 1901 to 1905 legislation applied to selected counties, cities, and districts; from 1905 to 1909 it was both local and general but optional with the parties and with the localities; since 1909 it has been general and mandatory.[1] On the whole it has been halting, half-hearted, opportunistic, and unscientific, and is still far from perfection. At the present time all state officials elected in the spring, including judges of the supreme court and regents of the university, all elective state administrative officers except governor and lieutenant-governor, and all township and village officers are still nominated by the old method, a method which is also retained for the selection of delegates to state and national conventions and in a modified form for the drafting of party platforms.

[1] General Primary Election Laws: Public Acts, 1905, No. 181; 1907, (ex) No. 4; 1909, No. 281; 1911, No. 279; 1912, (ex) No. 9; 1913, Nos. 118, 392; 1915, Nos. 219, 313.

Accordingly, in the direct primary are nominated candidates for United States senator, representative in congress, governor, lieutenant-governor, members of the legislature, circuit judges, county officers and most city officials.

Direct nominations produced an improvement in the political atmosphere of the polling place and a change in the character of the pre-nomination campaign. Candidates so far as possible appeal directly to the voters rather than to the party leaders and party workers;[2] but now as formerly they make use of headquarters, political managers and secretaries, literary bureaus, press-agents, county managers, clubs, and local committees.[3]

County and district candidates aim to get into personal relations with the voters and in doing so make a considerable expenditure of time and money, an expenditure which was generally unnecessary under the convention system. Pre-primary campaigns, of course, take place only in the event of a contested nomination and therefore mainly in the Republican party which has a large normal majority in the State.

That the financial burden imposed on the candidates is greater under the direct primary is a complaint frequently expressed, but apparently with only partial justification. While it was reported that Republican governors in the early nineties secured nomination at an expense not exceeding $2000,[4] an experienced politician in 1896 estimated that a campaign for a nomination, presumably for the office of governor, would cost approximately $40,000,[5] and the amount spent by each of the Republican candidates in 1900 and 1902 has been commonly estimated at not less than $100,000. Much of this expenditure

[2] Provisions in the laws requiring all county conventions of the same party to be held on the same day and declaring illegal the hiring of personal workers have contributed to make the appeal of the candidate general and direct.

[3] Detroit *News*, April 25, May 18, 31, June 1, 14, July 7, 13, 15, Aug. 16, 22, 23, 29, Oct. 11, 1910; Aug. 16, 1912. The length and strenuosity of a pre-nomination campaign was illustrated in 1910. In that year the campaign of the successful Republican candidate for governor lasted eight months, and during this time, according to a newspaper report, he delivered 800 speeches and traveled 16,000 miles, most of the distance by automobile. Detroit *Free Press*, Sept. 5, 1910.

[4] Detroit *News*, May 14, 1912.

[5] Detroit *Tribune*, Jan. 20, 1896.

was secret, taking the form of payment for entertainment,[6] for personal workers, and for direct bribery. In the first state primary campaign in 1906 there were no contests in either party, but the Republican gubernatorial contests of 1908 and 1910 were extremely close and probably more expensive than any that have followed.[7] Estimates of individual expenditures vary from $10,000 to $90,000.[8] The corrupt practice act of 1913[9] limits the nomination expenses of candidates,[10] and requires the filing of sworn financial statements. A candidate for governor is limited to an expenditure of $2500, a sum which would scarcely pay for the mailing of one postal card to each of the 221,688 Republicans who voted in 1914.[11]

In general, candidates appear to have filed statements in accordance with the law, but in many cases the statements themselves are incomplete or false. They appear to be most accurate in the rural counties and least reliable in the large cities. They are highly instructive, but unfortunately the law has prescribed no uniform scheme of itemization. In the Republican primary in 1914, Mr. Osborn, the successful candidate, reported an expenditure of $1822.46,[12] while for the Democratic nomination Governor Ferris had no opposition and the only expense borne by the committee, self-appointed to secure his renomination, was a little over $100 for the circulation of petitions.[13] In the congressional primary in the first district the six Republican aspirants spent a total of $1884.60, while the unopposed Democratic candidate spent nothing.[14] In all

[6] Ibid., Jan. 20, 1896; Oct. 23, 1898.

[7] Detroit *Free Press*, Aug. 19, 1908.

[8] Detroit *News*, April 19, 1912; Grand Rapids *Herald*, Sept. 18, 1910.

[9] Public Acts, 1913, No. 109.

[10] The law prohibits expenditure in excess of 25 per cent of one year's compensation, but provides that candidates for governor and lieutenant-governor may spend 50 per cent.

[11] One of the Republican candidates in 1912 said in a newspaper interview that he had tried to reach every registered voter with printed matter. Detroit *News*, July 18, 1912.

[12] Statement in office of clerk of Chippewa County.

[13] Ibid., Ingham County.

[14] Statements in office of clerk of house of representatives.

congressional districts in 1912 the average expense of Republican candidates was $287.69, of Democratic, $36.06; in 1914, the Republican average was $404.77, the Democratic, $85.67. Those Republicans who had to fight for places on the ticket disbursed in 1912 an average of $417.16, in 1914, $559.87. The successful candidates spent considerably more than the unsuccessful. Compared with their opponents the Democrats even in contested districts spent little. No candidates in either year approached the limit of expenditure which for congressional candidates is $5000.[15]

In studying the expenses of county candidates we have the advantage of possessing data from various counties although unfortunately for only one campaign, that of 1914. The relation of primary expenditure to party strength is well illustrated by a comparison of Ingham and Washtenaw counties. These counties are nearly equal in population and in the salaries of their county officers, but Ingham is strongly Republican while in Washtenaw the Democrats have a fighting chance. In 1914 candidates in both parties for the five principal county offices[16] spent in Ingham $1078.88 and in Washtenaw $1064.35; but while the Republicans spent in Ingham 94 per cent of the total, they spent in Washtenaw only 45 per cent.[17] Where party strength is about equal it appears that contests occur in both parties and primary expenditure is equalized, but where one party predominates most of the financial burden is borne by that party.

Irrespective of legal limitations there has apparently been a tendency for primary expenses to decrease. A politician states that at the first primary election in his county, that of 1906, he won the Republican nomination for county clerk against four opponents with an expenditure of $1700; but in 1914 in the same county the largest amount spent by any of five candidates for sheriff was $129.[18] The opinion of this politician is that ex-

[15] U. S. Statutes at Large, Vol. 37, p. 28.

[16] Sheriff, prosecuting attorney, clerk, registrar of deeds, and treasurer.

[17] Statements, Ingham and Washtenaw counties.

[18] Ibid., Calhoun County; and conversations. In 1914 the nomination for clerk was uncontested.

penses tend to grow less as the methods and necessities of primary campaigning become better known.

Accordingly, while there is among politicians a diversity of opinion with regard to the comparative financial burdens of the convention and direct nomination systems, the available data indicate that the direct primary is less expensive for state candidates and probably more expensive for county candidates, while for all candidates expenditure tends to decrease.

A skillful chairman of the Wayne County Republican committee estimated in 1896 that out of a total expenditure of about $40,000 a candidate, presumably for the office of governor, would spend $5000 for a political manager, $10,000 for paid agents, $2000 for local workers, and $5000 for advertising.[19] In the primary campaign of 1914 Mr. Martindale and Mr. Groesbeck, Detroit candidates for governor, each devoted almost one-half of his outlay to advertising; and, in general, candidates are spending now much more relatively for printing and advertising, and, if they observe the law, nothing for personal workers. The principal disbursements of local candidates are for newspaper advertising, cuts, and cards, with an occasional payment for automobile hire, printing, postage, and traveling.

The filing of petitions has not proved a satisfactory method of securing and exhibiting popular endorsement. Petition circulators are paid three, four, or five cents a name, and under the circumstances there are many duplications. Party enrollment which was a feature of the laws from 1905 to 1913 caused special inconvenience. In the cities about 50 per cent of the names had to be struck off as not being the names of enrolled voters, while in the rural districts petitions ran about 75 per cent good.[20] A Republican chairman charges that the Democratic leaders in his county call voters up over the telephone and ask them if they will sign petitions and when a reply is favorable the leaders simply write down the names.

The belief that the direct primary would evoke popular interest and lead to a more general participation in the making

[19] Detroit *Tribune*, Jan. 20, 1896.
[20] Detroit *News*, July 9, 1912.

of nominations was an influential factor in the establishment of the system. According to the best opinion and such figures as the newspapers published the average attendance at the primaries under the convention system was about 20 per cent of the Republican party membership and less than 20 per cent of the Democratic. At the first local primary election in Detroit in 1903 the vote, according to the estimate of an able politician, was from 100 to 200 per cent greater than that in the corresponding primaries under the old system.[21] In Grand Rapids the primary vote increased from 3921 in 1901 to 8213 in 1903.[22]

The vote for candidates for governor, however, probably affords the best basis for a comparison. Disregarding the uncontested primary of 1906, the Republican vote had increased from 61 per cent of the party membership[23] in 1908 to 93 per cent in 1914; and the Democratic vote, unstimulated by contests, reached 25 per cent in 1912, relapsing to 19 in 1914. In the seven counties containing the most foreign-born and illiterate voters[24] the Republican vote has been far above the percentage for the State, in the last three primaries exceeding the party membership;[25] while in the seven counties containing the least foreign-born and illiterate voters the percentage has been considerably below that for the State.[26] In the urban counties the vote has generally been heavier than in the rural. In Detroit the vote in the four wards conceded to be the "worst" in the city[27] has always been markedly heavier than in the "best" wards,[28] and in 1914 the Republican vote in the "worst" wards

[21] Simons, *Direct Primary Elections*, Mich. Pol. Sci. Assoc., *Publications*, V., March, 1904, pp. 134–144.

[22] Files of the Grand Rapids *Herald*, 1901, 1902, and 1903.

[23] The vote for the candidate for secretary of state is taken as the party membership.

[24] Alger, Baraga, Cheboygan, Iron, Mackinac, Presque Isle and Schoolcraft.

[25] The percentages were: 1910, 120; 1912, 134; 1914, 109.

[26] Calhoun, Hillsdale, Ionia, Lenawee, Livingston, St. Joseph, and Washtenaw Counties. The percentages were: 1908, 54; 1910, 69; 1912, 51; 1914, 46.

[27] The fifth, seventh, ninth, and eleventh.

[28] The first, second, and seventeenth.

was over twice the party membership. The light Democratic vote has been much more uniform than the Republican. Popular participation, therefore, has in both parties been more general than in the primaries of the old order, but unfortunately the voting in the majority party is quantitatively best where the electorate appears to be qualitatively worst.[29]

A study of the percentages of the last three primaries, making deductions for the Republican split in 1912 and the consequent decrease in the party membership as indicated in the election returns, makes it clear that the Republican primary vote as compared with the party membership was actually less in 1912 than in 1910 or 1914 while the Democratic vote was larger in 1912 than in 1910 or 1914.[30] A reason for these reciprocal fluctuations may be found in legislative attempts to curb Democratic participation in Republican primaries, an admitted evil and a most difficult and persistent problem. To reduce this evil to a minimum the legislature had provided for party enrollment, but the resulting partly "closed" primary made interparty incursions more difficult without completely preventing them.[31] Where Democrats had sufficient individual foresight or where they were guided by skilled manipulators they enrolled as Republicans and voted in the Republican primaries. To encourage them to vote in their own party the legislature in 1911 amended the law so as to require of each party, as a condition precedent to a place on the official ballot, a vote in the primary election equal to at least 15 per cent of its membership; but this requirement, as well as the provisions for enrollment,

[29] The above statements hold good for the total primary vote of all parties as compared with the total election vote, although the percentages of course are smaller. Those for the state, however, are: 1908, 39; 1910, 56; 1912, 40; 1914, 55.

[30] The Republican percentages were: 1910, 86; 1912, 90; 1914, 93. But the combined Republican and Progressive vote in the primary in 1912 was only forty-nine per cent of their combined vote in the election. The Democratic percentages were: 1910, 16; 1912, 25; 1914, 19.

[31] In wards in Detroit which were strongly Democratic more Republicans were enrolled than Democrats. Detroit *News*, Aug. 23, 1912. In 1912 in Detroit which at the time had a Democratic mayor there were 11,584 enrolled Democrats and 46,676 enrolled Republicans. Detroit *News*, Aug. 3, 1912; Detroit *Free Press*, Aug. 26, 1912.

was abolished by the legislature of 1913, making the primary of 1914 absolutely "open."

The decreased Republican primary vote in 1912 and the increased Democratic vote were probably due more to the general political situation, which encouraged Democratic local contests and discouraged Republican, than to the 15 per cent provision; but nevertheless, the returns suggest a shifting of votes from one party to the other, and are therefore indicative of the extent to which the minority party has interfered in the internal affairs of its opponent. A comparison of Ingham and Washtenaw counties furnishes additional illustration. In Washtenaw, where elections are doubtful and contests occur in both parties, the percentage of Democratic voting in the primary has been larger than in Ingham, a "safe" Republican county, and the percentage of voting Republicans smaller. The extent of Democratic interference is suggested by the fact that in Ingham the Republican vote decreased 24 per cent in 1912, and increased 36 per cent in 1914 while the Democratic vote increased 8 per cent in 1912 and decreased 5 per cent in 1914. In Washtenaw the fluctuations are not only markedly less, but in 1914 the Democratic vote showed an increase.[32]

It has been stated that at times various counties and wards have cast more Republican votes in the primary than in the election. Such a phenomenon has usually been caused by Democratic participation, but it may be due to local pride or to defections in the election. A combination of these three causes appears in the Wayne County vote in 1914. This county had two "favorite sons" neither of whom secured the nomination. The successful candidate, Mr. Osborn, having supported Mr. Roosevelt in 1912, the "regular" Republican leaders in Detroit, which is in Wayne county, quietly "swung" the controlled vote to the Democratic candidate. The Republican primary vote in Wayne was 47,334; the vote for Osborn in the election was only 21,483. In "Billy" Boushaw's precinct, the first of the first ward, the primary vote for governor was: Republican,

[32] The percentages were, in Ingham: Republican 1910, 66; 1912, 42; 1914, 78; Democratic, 1910, 12; 1912, 20; 1914, 15; in Washtenaw: Republican, 1910, 57; 1912, 43; 1914, 47; Democratic, 1910, 25; 1912, 30; 1914, 43.

265; Democratic, 12; while the election vote for governor was: Republican, 1; Democratic, 259.[33]

Democratic participation has occurred in all counties which are strongly Republican and reaches its maximum where there is a body of controlled voters as in Detroit. In the "open" primary of 1914 the evil was apparently more serious than ever before and was probably responsible for the nomination of a Republican candidate who was distasteful to the majority of his party. While there is no opportunity for a numerical comparison, party interference is probably greater now than under the convention system. Returning to this problem, the legislature of 1915 provided for separate ballots and prescribed that when the voter asks for his ballot "the inspector shall enter his name upon the list together with the name of the party the ballot of which is requested."[34] This law makes enrollment an accompaniment of voting rather than a prerequisite and qualification for voting.

Besides the evil of inter-party interference, Michigan has suffered considerably from the putting up of "dummies" and the multiplying of candidates with resulting minority nominations. For example, in the first district congressional primary in 1914 there were six Republican candidates, and out of a total vote of over 20,000, less than 5000 sufficed to nominate. In the gubernatorial primary of the same year involving five Republican candidates the nominee received 58,405 and his opponents 143,770. When there are more than two candidates, and there very frequently are, a minority nomination appears to be the general rule.

A nominating system, however, deals with human not mathematical factors, and after all the true test of the machinery is found in the character of its product, the nominee. The large number who hold that nominations have not improved point to the machine politicians who were conspicuous under the old

[33] In the first of the second, the primary vote for governor was: Republican, 166; Democratic, 2; while the election vote for governor was: Republican, 38; Democratic, 147.

[34] Public Acts, 1915, No. 313.

régime who have not been retired under the new. The Republican nominee for governor in 1908 ran 66,062 votes behind the state ticket, receiving the smallest Republican plurality since 1890, and the unacceptability of the candidate in 1914 has already been referred to. A rural county chairman thinks that it is the "smooth oily guy" who gets the nomination. A Detroit newspaper writer of long experience declares that the system brings out "freak" candidates, men with personal conceits and hobbies, men who have much to win and little to lose. A Detroit lawyer who led in the fight for the direct primary a decade ago, but whose opinion of it has changed, observes that young lawyers enter the primary to get their biographies in the papers and their names in the public ear. Sometimes such an irresponsible adventurer aided by luck is nominated. Thus, in Detroit in 1910 Mayor Breitmeyer was accidentally defeated for a Republican renomination by one Owens, called by the Municipal League, "A poorly educated lawyer with a poor business."[35]

Hostile critics of direct nominations contend, moreover, that the system is practically unfitted to enlist the services of the best men. A good man, they say, dislikes to offer himself or appear to offer himself for a nomination and to conduct a personal campaign involving heavy physical and financial burdens and disagreeable controversy. The convention representing, at least in theory, the unified sentiment of the party could deliberately select a man to meet the peculiar exigencies of the time, and could conscript when the direct primary must wait for volunteers. The convention issued what was at once an invitation and a command of a party rather than of a faction, and this call to service and leadership was as flattering as it was compelling. In the fourth congressional district in 1912 the Democrats believed that a well-known candidate with an honorable public record would be able to defeat Congressman Hamil-

[35] I say "accidentally" because Owens received the votes of Democrats and disgruntled Republicans who had no idea of nominating him, but who aimed to discredit the mayor by giving his opponent a substantial vote. Many voted for Owens as a joke. Detroit *News*, Oct. 29, 1910.

ton. Accordingly they asked Judge Yaple, probably the strongest Democrat in the district, to enter the primary. Judge Yaple was old, no longer inclined to seek honors and a contest with two young and ambitious fellow-Democrats was repugnant to him. He therefore declined to run. Under the convention system it is argued, Judge Yaple would have been nominated and the election returns show that he would probably have been elected.

On the other hand, those who believe that nominees are of a higher order point to a general improvement in official character, to the infrequency of graft and scandals, to the retirement of many bosses, and to the absence, since the death of Senator McMillan in 1902, of a dominant state machine. In the senatorial primary of 1910 Congressman Townsend, an "insurgent" was opposed to Senator Burrows, a reactionary, and Townsend was nominated, even carrying the upper peninsula where, under the convention system, the mining interests who were favorable to Burrows had absolutely dominated the situation.

On the whole, however, the balance between the old and the new systems so far as the character of nominees is concerned appears to be about even. Under each system there have been nominations good or bad which could not have been made under the other.

Primary nominees, however, are likely to be of a somewhat different type. To get an important office one must still be a man of means, but since the adoption of direct nominations there have been no "barrel" candidates as in 1900 and 1902. It is a moot question whether the office-holder has an advantage over the non-office-holder. Many voters vote only for a name; and the incumbent of an office obtains an abundance of advertising and has an opportunity to make friends, the prime asset of the candidate. On the other hand, where the feeling is strong that honors should be "passed around" there is likely to be a prejudice against the office-holder. The city candidate is likely to win over his rural opponent and in general the cities appear to get a larger share of the county nominations than under the convention system. The presence of various racial elements con-

stitutes a difficult problem; and in the upper peninsula, where there are various distinct groups of foreign-born, nominations are likely to go to the numerically strongest racial group, producing dissatisfaction among the other groups.

Michigan laws have provided for the appointment of the officers of the local committees by the candidates, and this provision has given general satisfaction. Although not legally required to do so, the candidate for governor, at least in the Republican party, usually names the chairman of the state central committee. In the county committees as a whole, however, there is less activity and interest than formerly. They evidence less sense of responsibility and less fear of party discipline. In personnel the committees have improved except in Wayne County where local conditions have been unfavorable.

If the direct primary is unpopular among Republican candidates, as it unquestionably is, it is anathema to Republican managers. On one indictment they all agree: it "hurts" or "weakens" the "organization;" and by "organization" they mean the party as a vote-getting and vote-conserving association whose desiderata are solidarity, loyalty, enthusiasm, and discipline. It is possible that in some states the direct primary has strengthened the organization by reconciling the members of the party to the leadership of those they believe to have been fairly chosen, but under Michigan laws it has not had this effect.

Conventions, it will be remembered, are still held in Michigan; but having lost their most vital and exciting functions tend to become cut-and-dried affairs, and unless some leader of national reputation is advertised to speak they no longer attract the active workers of the party. It was a function of the convention to fuse party factions into a common loyalty and to act as a generator of partisan enthusiasm. The convention provided an opportunity for compromising differences so that, however fierce its factional contests may have been, at the end of its sessions it presented a united front to the enemy. The gathering had many resources. It could bargain with the leaders of factions, and throw sops to the disgruntled. Above all it could develop party strategy, which consists, for example, in nominat-

ing a farmer when the other party has ignored the farmers, or a man of talents to measure up to a strong adversary or an unusual emergency—in other words so to make its nominations as to appeal to the independent vote and to the maximum number of elements and interests. The direct primary is unable to do these things; or does them blindly, clumsily, and inadequately. The tendency under the convention system was for each party to attempt to seize the unguarded points in the field; while the tendency under the primary is for both parties to try to occupy the same space at the same time.

Furthermore, for a period ranging from six months to a year opposing candidates within the party engage in a personal campaign of cumulative intensity culminating only two months before the election. How wide the gap between factions may become is illustrated in speeches made by Mr. Osborn in the primary campaign of 1910. "One thing I do not believe in," he said, "is political assessment of political employees. I am fighting all the 400 employees of the governor. The administration is assessing all the employees it can control." And again: "If I am made governor I will put out of office, so far as possible, all the dishonest and incompetent appointees at present at work."[36] Thus, within the ranks of a party—for it must be remembered that both Mr. Osborn and the state administration were Republican—appeared the familiar characteristics of a clear cut struggle between parties: a machine, assessments, and spoils. These bitter internal struggles destroy the physical and moral unity of the party, forfeit the loyalty of its followers, sap its financial resources, and give to the opposition a store of unanswerable campaign arguments.[37]

The weakening effects of factionalism are experienced almost wholly by the majority party, for the Democrats have not yet had a contest in a state primary. Moreover, as we have seen, the members of the minority party are much more than complacent spectators of their opponents' quarrels. They have ac-

[36] Detroit *Free Press*, Sept. 2, 3, 1910.

[37] "Apparently the rule is that the primary is harmful in proportion to the interest taken in it. . . . . " Detroit *Free Press*, April 24, 1916.

tively intervened, and in important instances have probably determined the Republican candidate.[38] With no disrupting contests, the Democratic organization has retained large control over the making of nominations. With the nomination of minority candidates in the Republican party the selecting of the party officials by these candidates has the effect of putting the management of the party in the hands of a minority, and produces a discontinuity in Republican leadership; while in the Democratic party the absence of factions and contests has furnished no cause for the unseating of managers, and continuity in management has contributed to party strength. The direct primary, therefore, handicapping the stronger competitor in the race for office, acts to some degree as an equalizer of party strength. The stimulation and efficiency derived from unity, harmony, strategy, secrecy, continuity, and the saving of financial resources, remain in the minority party unimpaired.

As means of escape from the destructive effects of the primary two developments have taken place: the bi-partisan agreement and the pre-primary conference.

In Detroit, where there are according to common estimates 14,000 controlled voters, there has been an obscure but effective bi-partisan machine, called familiarly the "Vote-Swappers' League." There were rumors of such a combine as early as 1901, and to its development the foreign voters, the saloon influence, and the disappearance of distinctive party principles have contributed. But to such a combine the direct primary furnishes, in the means of manipulation which have been discussed in this paper, efficient instruments of control. How far the bi-partisan arrangement has extended is largely a matter of guess; although it is asserted to exist in other counties and an attempt has possibly been made to extend it to state offices.[39]

The pre-primary meeting for the selection of candidates is a less covert and more defensible method for the reintroduction

[38] As in the nominations for governor and for congressman in the first district in 1914.

[39] See my paper on Bi-partisanship and Vote Manipulation in Detroit, in the *National Municipal Review*, Oct., 1916.

of management into the process of nominations. One Republican county chairman states that since the Progressive movement they have found it difficult to induce men to run for office and that the county committee has "had to hustle around and file petitions for them." Naturally this has been done more by Democrats than by Republicans; but in some counties both Republican and Democratic committees meet prior to the primaries, pick out candidates, and circulate petitions for them. When it does not actually circulate petitions the committee in many cases attempts to influence strong men to enter the race and weak ones to withdraw. In Washtenaw County the Democrats have held a pre-primary mass convention the object of which was to enthuse and unify the party and to afford an opportunity for the discussion of nominations. It is the majority party, however, which feels most keenly the need for some form of centralized control.[40] In 1914 the Republican state central committee appointed a sub-committee on revision of the primary law. The report of this sub-committee,[41] representing the matured opinion of some of the more studious Republican leaders, recognized two "basic causes of complaint": "the persistent participation of Democrats and other hostile partisans" in Republican primaries, and the lack of opportunity for party counsel. To remedy this second defect the committee proposed that the state convention meet before instead of after the primary, that it make nominations, and that the convention nominees have first place on the primary ballot. The plan aimed to restore the nominating convention with safeguards in the selection of delegates, and to give to the rank and file of the party a power of veto and substitution. The Democratic and Progressive parties, declared the committee, "have almost never yet gone into a state primary in Michigan without some sort of an unofficial

[40] I am told that the Republican state leaders attempted to hold a pre-primary conference in 1912 for the purpose of agreeing upon a candidate, but objection was at once made that this proceeding was a violation of the spirit of the direct primary.

[41] *A Petition to the Michigan Legislature*, printed by the Grand Rapids *Herald*, 1914.

conference of party leaders preceding the primary." The legislature, however, did not adopt the proposed plan.

While many party leaders insist that the pre-primary convention, legal or extra-legal, is inevitable, others dismiss the idea as adding one more complication to an already over-complicated situation. They say that, with a legalized pre-primary convention, there would be three campaigns where there are now two: one for the convention, one for the primary, and one for the election, making conditions intolerable for the candidate.[42]

It is not altogether irrelevant to inquire whether the convention system would, if restored, work as badly as it did a decade ago. This inquiry, however, was pretty thoroughly answered in 1912. The Republican state convention for the choosing of presidential delegates, the worst in almost every respect in the history of Michigan, illustrated the inherent faults of the convention system, its incapacity to adjudicate vital disputes equitably and the lack of provision for an impartial preliminary organization and for an impartial presiding officer. In the campaign for delegates prior to this convention, the Taft managers spent almost $19,000[43] over ten times the amount spent by the successful Republican candidate for governor in the 1914 primary election. Judge Murfin of Detroit testified that the Taft-Roosevelt primaries in that city were "absolutely the rottenest and most corrupt that Michigan has ever seen."[44] The Wilson-Harmon primaries were not much better; and as a matter of fact practically the same machine was engaged in manipulating both primaries.

A return to the convention system, therefore, while probably desired by many politicians is expected by few and seems hardly within the range of possibility. Experience with the direct primary, however, has brought disillusionments: the system is

[42] Of course, various other reform proposals find adherents in Michigan. Some of these proposals, especially the short ballot and the preferential vote, would doubtless accomplish much good.

[43] Testimony before the Clapp committee. 62d Cong. 2 Sess., U. S. Sen. Doc. I, pp. 778–779.

[44] Ibid., p. 976.

not popular, it has revealed serious shortcomings, and there is at present no public demand for its further extension.[45]

[45] The tendency has been to retreat rather than to advance. An act of 1913 (No. 395) providing for the popular election of state central committees was supplanted in 1915 by an act (No. 231) which legalized the customary selection of the committees by the state conventions; and there is a justifiable demand for the repeal of the presidential primary law. "The utter futility of the presidential primary needs no further demonstration. It is a useless, expensive, and undesired innovation in our political system." Detroit *Free Press*, April 5, 1916. I have not seen the official canvass of votes in the primary of 1916, nor the statements of expenditures filed by candidates; but, so far as my observations have extended in 1916, they suggest no modification of the conclusions reached in this paper.

# LEGISLATIVE NOTES AND REVIEWS

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**Legislative Sessions 1916.** The following States held regular sessions in 1916: Massachusetts, Rhode Island, New York, New Jersey, Maryland, Kentucky, Georgia, Louisiana, Mississippi, Virginia and South Carolina. The following States have held special sessions: Oklahoma, California, Illinois, Connecticut, Tennessee, and Massachusetts.

The Oklahoma legislature met and adopted a registration act, a usury act, and a measure to create industries at the state prison. The California legislature convened to revise the primary and election laws. The Illinois general assembly met primarily to pass laws for appropriations which had been declared unconstitutional. Tennessee legislators met to consider charges against certain county officers. Connecticut and Massachusetts convened their legislatures to authorize the soldiers on the Mexican border to vote. J. A. L.

**State Administration and Budget. Governors' Messages.** Few proposals were made by the governors of the various States which had legislative sessions in 1916 touching reorganization of state government. The governors of three States—Rhode Island, Maryland and New York—made proposals regarding the budget system, and one governor only, Mr. McCall of Massachusetts, dealt with the subject of state administration from the standpoint of its organization for efficiency.

Of the three proposals for a budget system, that in New York was the most comprehensive. The subject of a budget has been of supreme importance in New York owing to the extent of the State's business and its growing complexities. An executive budget system was proposed in the new constitution which was rejected in 1915. Governor Whitman attempted to secure orderly budget procedure in the session of 1915 and 1916 but failed to secure the adoption of the plan.

The recommendations made by Governor Whitman in his message regarding the budget are as follows:

*First.* That the fiscal year end June 30 in order to eliminate the excuse for special and supply bills.

*Second.* That all appropriations for a fiscal year shall be in one appropriation act, except in case of emergency or of the creation of new departments.

*Third.* That all appropriations shall lapse at the end of the fiscal year.

*Fourth.* That all appropriations shall be made so as to describe clearly and specifically how state money shall be used.

*Fifth.* That appropriations for any one department or activity shall be expressed in items closely associated, so that knowledge of the total expenditures for each group or activity, instead of being scattered in a number of bills passed at intervals, are made the subject of one legislative consideration.

*Sixth.* That appropriations for salaries and wages shall be subject to schedules which are segregated from the rest of the act.

*Seventh.* That appropriations for expenses of maintenance shall be made subject to schedules classified according to kinds of expense and when required, apportioning these classifications to the activities or sub-activities for which they are established.

*Eighth.* That appropriations for a specific work or object should be segregated.

"It is in the preparation of these supporting schedules of appropriations that coöperation before final enactment between the legislature and the executive will be necessary, so that the total of the appropriation and the total of the schedules shall agree. Otherwise, to give the executive the opportunity to veto individual items of expense, it will be necessary for the legislature to make a separate appropriation for each of the items entering into these schedules."

In connection with the message, Governor Whitman submitted a suggested form of an appropriation bill. The legislature did not, however, follow the procedure outlined.

Governor Goldsborough of Maryland submitted his views of the budget system as follows:

"Contrary to the usual idea of a budget system (which is understood to mean an enumeration of governmental necessities which should be properly taken care of by levies) the State finds that in the adoption of this system it must accommodate its expenditures to probable receipts, the receipts becoming the fixed quantity to which the expenditures must adapt themselves. To do this with any degree of satisfaction or accuracy requires more time and study than the constitutional limitation of your sessions can possibly allow. It will, therefore,

become necessary to vest, by constitutional authority, in certain designated officials, the power to fix a maximum amount which may be appropriated by the legislature for any particular governmental purpose. It will require much research and special information to accomplish this and still leave the finances of the State flexible enough to meet the exigencies as they may arise subsequent to the fixing of the amounts needed for the support of the government. You will, no doubt, have before you various plans by which this may be done (and it does seem to be a necessity) and, therefore, I can only urge upon you the exercise of great care to the end that the mobility of government be not destroyed; as hard and fast rules frequently lead to greater hardships than existed before these apparent remedial and beneficial steps were taken.

"It would seem to harmonize better with our system of government to vest this power of fixing a maximum amount of appropriations for various government purposes—that is, an amount which the legislature can appropriate according to its own discretion—in the hands of the treasury officials, the comptroller and the state treasurer, who are supposed to possess that intimate and accurate knowledge of the state treasury's possibilities and limitations necessary to best accomplish the desired result. The reason for not including the governor as one of the budget commissioners is that by the exercise of his constitutional right of veto he could exert an afterthought with more freedom and effectiveness than were he bound by the recommendations or suggestions of a body of which he was a member, namely, the board of public works. Thus we would have two independent restraints upon the recommendations of the budget commissioners—the governor and the legislature."

Governor Beeckman of Rhode Island advocated reform in the following statement:

"I believe a distinct improvement can be made in the present method by the adoption of some form of budgetary system. A thorough canvass can be made of the several state departments and institutions prior to the convening of the general assembly, and an accurate estimate of their needs compiled and presented in convenient form for reference at the opening of the session.

"The appropriations fixed by statute, which, after such a canvass, are found not to require any increase or decrease, should be made continuing appropriations, and should not be considered annually by the legislature; while those which are found to be in need of revision

should be changed by statutory enactment. In this way, the diligence of the legislature and the finance committees could be more closely and effectively applied to those appropriations which vary in amount from year to year, and which must be based upon the fluctuating requirements of the departments to which they apply.

"It frequently occurs that bills calling for the expenditure of substantial sums are not presented until late in the session. This condition could be relieved by a provision of law making impossible the introduction of measures of this character after a certain period excepting upon recommendation of the governor.

"A financial survey of the various departments and institutions of the state has recently been made at my request and the information obtained will be submited to you for your immediate use. I believe that the method I have suggested for determining the probable annual state expenditures in advance of the session not only will result in a material saving of time, but will tend to foster greater economy in the conduct of the state's business. I therefore recommend the enactment of the legislation necessary to carry such a system into effect."

Governor McCall of Massachusetts indicted the system of state government in vigorous language. "In my opinion," he said, "an unnecessary amount of expenditure is required in the mere work of administration. Our machinery of government is too complicated and expensive of operation. Very much could be saved by providing simpler mechanisms, and we should even then doubtless be sufficiently governed, and probably better governed. We have a hydraheaded system of administration with a minimum of central responsibility. We have more than one hundred different commissions and departments of administration, and the management of the business of the commonwealth is diffused and exercised through a multitude of little executives. The result is seen in a lessening of efficiency, in an increase of expense, and in a kind of government which can not be called popular. The people do not elect the members of the commissions. Each year at the election the contest centers upon the choice for governor, and the only vote which the people of the whole state give directly upon the general administration of their affairs is the vote they cast for governor. But some of the commissions have a greater administrative force than the central executive himself, and he stands in the shadow of a multitude of administrative agencies created by statute. No private business could be conducted successfully with such a lack of central control. The striking feature of business today

is seen in concentration, and in doing away, so far as possible, with separate mechanisms and organizations, with their lack of efficiency and their multiplication of expense. A great man of affairs recently expressed the opinion that if private business were conducted upon the system prevailing in our public affairs it could not stand competition with other concerns carried on according to modern methods, but would speedily become bankrupt.

"The first characteristic of a political organism is toward growth. It strives to augment its own power and to take unto itself the paraphernalia and trappings by which power is exercised. A law is enacted which its authors deem important, and they think to magnify its importance by the establishment of a special commission to carry it into effect. The commission may at first have only a single member, who will enter upon his duties in the most primitive fashion, but estimates for increases soon appear in what is called our budget, and it flowers out into an imposing little government, with expensive quarters, private secretaries, inspectors, stenographers and telephones, and in order to justify its existence the private citizen who is taxed to help pay for the expense is sometimes harried and subjected to unjust prosecution. Work is often duplicated. There is no twilight zone between commissions, but all doubtful areas are illuminated by the joint work and the multiplied expense of the boards which come in contact with each other.

"I have no doubt that the far greater number of the members of our commissions are excellent men. The objection exists against the system rather than against those who have become associated with it. I believe that the number of commissions should be greatly reduced. I am aware that reduction is no easy task. Men in the public service are apt patriotically to think that their service is necessary to the State, and it is human nature for them to oppose the discontinuance of their positions. But no one of us here today is worthy to be in the service of the people if he is willing to permit a useless expenditure of money, taken from them by taxation, in order to support any man in an unnecessary office, and I confidently rely upon your patriotism to consider only the good of the commonwealth, and not to be diverted from the performance of your public duty by any personal considerations."

Specifically, he recommended the consolidation of commissions on registration; second, that jurisdiction of the harbors of the commonwealth be given to a single board; third, the decrease in the elaborate

machinery and expense provided for the public service commission; fourth, that the unpaid board in charge of the insane asylums should be reëstablished; fifth, the consolidation of the boards of labor and industry, minimum wage and industrial accident board should be accomplished; sixth, that a committee be selected to investigate the jurisdiction and work of the separate commissions to the end that reorganization might take place.

The governor declared: "The commonwealth must not abandon its great constructive works. It must continue its policy of building and maintaining good roads. It must continue also the development of its harbors, although it may hope to accomplish as good results without such an enormous expenditure as has recently been made. Its public institutions must be made to do the beneficent work for which they were designed; and it must not lag in the work of education. The chief hope of lessening expenditure lies in reducing the cost of administration, and if we shall deal resolutely with that subject I believe we may very materially lessen expense."

J. A. L.

**Legislative Investigations.** *Massachusetts.* The commission on economy and efficiency in Massachusetts was directed to conduct a special investigation of the amount and expense of printing done for each department of the State and the cost of distribution of public documents. The report was made in May, 1916. The same commission has been directed to make an investigation relative to the advisability of providing pensions for the needy blind.

The metropolitan park commission was authorized to investigate the necessity or desirability and the practicability of establishing camping grounds in the public parks of the metropolitan district.

A commission of three persons was provided for to be appointed by the governor, with the consent of the council, to investigate the advisability of abolishing the office of trial justice throughout the commonwealth and of annexing their jurisdiction to the police, district or municipal courts.

A special commission of three persons was appointed by the governor with the consent of the council to consolidate and arrange the general laws of the commonwealth upon the plan and general form and method of the existing revised laws.

The state board of labor and industries was directed to investigate the hours and conditions of labor prevailing in hotels and restaurants.

The board of education was directed to ascertain what facilities exist and what might be established to give special training and instruction to persons who have been injured and whose earning capacity has been destroyed or impaired.

A special commission of three persons was appointed by the governor "to revise and codify the laws relating to partitions and partition sales of real estate, sales for distribution, sales of real estate subject to reversions or vested or contingent remainders, or executory devise, assignments of dower, curtesy and homestead, and in fee to widows or widowers and to the establishing and protecting of the rights of tenants in common, joint tenants and of all persons having mortgages, attachments or other liens, undivided interests in real estate."

A special commission was created to investigate the subject of physical training for boys and girls in public schools and to define and recommend a system which will improve their physical, moral and mental qualities and provide the commonwealth with an adequate basis for a citizen soldiery with special reference to the following subjects: (a) Physical and disciplinary training; (b) military history; (c) personal hygiene and sanitation.

The report of the special commission on uniform methods and procedure for taking land for public purposes was submitted to the attorney-general for further consideration and for the preparation of bills.

Three persons were appointed a committee by the governor to investigate the matter of organizing the district police, and of establishing a state constabulary or police force which would relieve the militia from police duties.

A special commission composed of the economy and efficiency commission, a commissioner of education and three persons appointed by the governor was created for the purpose of investigating the subject of agricultural education as conducted by the Massachusetts Agricultural College and the development of the agricultural resources of the commonwealth.

The subject of habit-forming drugs and the effectiveness of the laws relating thereto is under investigation by a committee of three appointed by the governor.

The public service commission was directed to investigate the matter of receiving and delivering freight in the railroad freight houses in the city of Boston and the causes of delay in the loading and unloading of freight cars and to take necessary steps to the end that delays may be diminished and congestion relieved and charges made uniform.

A special commission composed of two members of the senate, four members of the house and three persons appointed by the governor was created to study the effects of sickness, unemployment and old-age in Massachusetts, and to collect facts as to the experience with the several forms of insurance, and to make and report together with drafts of bills to the legislature of 1917.

*New York.* The special commission created in 1915 to make an investigation of the public service commissions of the State with reference to their organization, powers and duties, and their administration, was continued to 1917.

A joint committee of the senate and house heretofore created was continued to investigate the report of the board of statutory consolidation and the simplification of the civil practice in the courts of the State and to investigate and inquire into all matters pertaining thereto.

A special committee created to "determine what legislation, if any, should be enacted to afford relief to the city of New York," was continued.

A special committee was created to investigate the allegations that the distribution of milk, butter, eggs, poultry and live stock is controlled by combination and monopoly of dealers to such an extent as to reduce production, impair quality, and unduly enhance the price to consumers.

A special legislative committee to investigate the use of lights on automobiles with a view to eliminating the glare headlights, and also the use of public highways by auto trucks and omnibuses, was created.

A special legislative committee was created to investigate and examine into the laws of the State in relation to the distribution and sale of habit-forming drugs and the manner in which such laws are enforced.

The committee on taxation was continued to make a final report in 1917.

A special committee created by the senate to investigate the civil service of the State was continued to 1917.

A special committee was created to investigate the subject of bridges outside of cities on the methods of construction and maintenance together with the general subject of the proper development of a uniform system of construction of bridges, culverts, and sluices.

*New Jersey.* The session laws of New Jersey for 1916 include authorizations or continuations of twelve special commissions and investigations. The commission on care of mental defectives, the com-

mission to investigate the desirability of establishing a system of pensions for state and municipal officers and employes, and the commission for the survey of municipal financing, were all continued. Newly created commissions are: a commission to investigate whether toll roads and bridges can be acquired by the State; a commission to investigate the problem of conserving fish; a commission to inquire into the observance, enforcement, application, operation and effect of the civil service law in the state, county and municipal governments and the advisability of amendments; a commission to investigate conditions in this country, experiences of states and foreign nations, character, expense, etc., with a view to establishing military instruction in high schools. The commission to ameliorate the condition of the blind was instructed to inquire into the causes of blindness, so that with the coöperation of the state board of health preventive measures might be adopted and enforced. Four commissions cover codifications or arrangement of various parts of the statutes, i.e., a commission to contract for a supplement to the compiled statutes of New Jersey to include laws of 1911, 1912, 1913, 1914, 1915; a commission to revise and codify state laws relating to cities and other municipalities; a commission to revise and codify the fish and game laws; a commission to revise, simplify, arrange and consolidate the primary and election laws of the State.

*Maryland.* The educational survey commission created in 1914 was continued so as to allow time for a survey of the higher educational institutions which it was found impossible to cover in the period originally allotted the commission and also continued the joint commission with the State of Virginia on fisheries industries legislation.

*Kentucky.* A commission to investigate conditions as to feeble-mindedness, with however, no appropriation for the State was authorized.

*South Carolina.* A state system of rural credit will be the subject for investigation by a special commission.

**Highway Administration and State Aid.** During the year 1915, the States expended $53,000,000 in state aid for road construction. In addition more than $27,000,000 of county and township money was expended under state supervision, making a total of more than $80,500,000 of road and bridge expenditures managed by the States under the system of grants in aid. In ten years expenditures of $263,350,000 of state money in aid of highway construction have been made, and

the annual expenditures have increased from $2,500,000 in 1904, to $53,000,000 in 1915.

This policy of grants in aid for highways began only twenty-five years ago when New Jersey established a state highway department, and began systematic construction and maintenance of highways. Since 1891, every State in the Union except Indiana, South Carolina and Texas, has established some form of highway department with powers ranging from mere advisory authority to minute control of local and state expenditures for highway construction and maintenance. Fifty thousand miles of roads have been constructed under the supervision of these departments up to January 1, 1916. The stimulus given to road construction by state aid has resulted in an increase of more than 250 per cent in road expenditures in ten years. The total expenditures for public highways in 1904 was $80,000,000. In 1915 it was about $282,000,000.

An analysis of the methods of supervision and control by the various States is, therefore, of the utmost interest and importance, and becomes of increasing importance in view of the recent appropriation of $85,000,000 to be expended by the United States government in aid of the States in road construction and maintenance.

New Jersey, which was the first State to establish a state highway department, is also one of the States in which great authority is exercised over the local governments in road matters. It is also one of the few States which builds and maintains a state system of roads entirely at state expense. In aid of local units the State grants aid for the improvement of highways to the extent of 40 per cent of the total expended. The commissioner of public roads is entrusted with the execution of the law granting state aid. After conference with the boards of chosen freeholders in the respective counties, he passes upon aid in road improvement. The surveys, plans, estimates and specifications are made locally but are approved by the state commissioner before the local authorities advertise for bids. The contracts and bonds are examined and approved by the commissioner before work begins. When the work has been completed a written statement with entire cost data is submitted to the commissioner and if, after inspection, it is approved by him, the State's portion of the cost is paid to the county. When the roads are constructed, they are maintained by the counties, townships and municipalities. If a road is neglected, the state commissioner withholds payment of any money that may be apportioned to a county until repairs are made.

With many variations in detail the following States carry on highway work in a manner similar to that of New Jersey: New York, Massachusetts, Alabama, Arizona, Connecticut, Colorado, Tennessee, Idaho, Illinois, Iowa, Louisiana, Maine, Maryland, Michigan, Minnesota, Missouri, Montana, New Hampshire, New Mexico, North Carolina, Ohio, Oklahoma, Pennsylvania, Rhode Island, Utah, Vermont, Virginia, Washington and Wisconsin. Many of these States build and maintain a system of state roads entirely at state expense, while others build roads only through aid to the local governments. Wyoming is building a system of state highways with convict labor, and California by means of a bond issue.

The other form of commission is the educational or advisory commission. The following States have an advisory or educational board or engineer: Arkansas, Delaware, Florida, Kansas, Kentucky, North Dakota, Nebraska, Oregon, South Dakota, and West Virginia. It is made the duty of the highway commission in all of the States giving state aid to give information and assistance to local officials regarding road construction.

Along with the control which the States exercise through the medium of grants in aid, there has grown up considerable centralized authority of state officials over local officials. Formerly, practically no authority was exercised by the state authorities over local road officials and in most of the States even yet, there is little authority outside of the control over officials in constructing and maintaining state roads and state aided roads. The State of New York is perhaps the most important example of centralized administration. A county superintendent is appointed by the board of supervisors in each county and if they fail to make the appointment, the state highway commission appoints. The county highway superintendent may be removed by the state highway commission upon written charges and is also subject to the rules and regulations of the state commission. The town superintendent of highways is elected by the people of the townships, but he is subject to the regulations of the state highway commission. Similar examples of centralization are found in New Mexico, Iowa, and Illinois.

The following States have a highway board or commission which is in some cases *ex-officio*. In other cases a state engineer is appointed to do the work under the board. Alabama, Arkansas, California, Florida, Idaho, Illinois, Iowa, Louisiana, Maine, Maryland, Massachusetts, Minnesota, Montana, Nebraska, New Jersey, New Mexico, North Carolina, North Dakota, Oregon, Rhode Island, South Dakota, Tennessee, Utah, Virginia, Washington, West Virginia, Wisconsin.

The following States put the matter in the hands of a single state engineer or highway commissioner: Arizona, Colorado, Connecticut, Delaware (for one county), Kansas, Kentucky, Michigan, Missouri, Nevada, New Hampshire, New York, Ohio, Oklahoma, Pennsylvania, Vermont, and Wyoming.

Only six States have provisions in their road laws providing for the appointment of subordinates through civil service examinations. Illinois provides that all assistants, agents or clerks under the state commission, except the highway engineer and the assistant highway engineer, shall be subject to the civil service laws of the State. County superintendents of highways are also selected by examination by the state highway commission from persons proposed by the county board of each county.

Massachusetts places the appointment of subordinates under the civil service law of the State. The commissioner of public roads in New Jersey is authorized to employ a staff of qualified road inspectors certified as such by the civil service commission. New York provides that all subordinates be appointed subject to the civil service law. District and county superintendents of highways are selected by county boards from lists prepared from examinations. The Wisconsin civil service law covers the appointment of subordinates and also the appointment of the county highway commissioner. Kentucky, which has no civil service law, requires that the county engineer shall have passed a creditable examination given by the state commissioner of public roads. J. A. L.

**Federal Grants in Aid.** The United States government has given vast amounts of money and lands in the last century to the States to aid in various matters. Over $500,000,000 has been given to education alone. Most of the permanent state school funds have been formed principally from such grants. These grants were made outright. There were no conditions attached except their acceptance by the States. The grant of certain sections of land was conditioned that the money should be used for education. That was as far as the restrictions went and there was no means of enforcing even that.

The first large grant for agricultural and mechanic arts education—the Morrill act, made no restriction, simply providing that the States through the legislature should accept the grant and that the funds derived from the sale of lands should be kept intact "to the endowment, support and maintenance of at least one college where the leading ob-

ject shall be, without excluding other scientific and classical studies and including military tactics, to teach such branches of learning as are related to agriculture and the mechanic arts in such manner as the legislatures of the States may respectively prescribe in order to promote the liberal and practical education of the industrial classes in the several pursuits and professions in life."

Aside from the bare statement in the law that certain things should not be done such, for instance, as that no buildings should be erected or purchased out of the fund, and that money lost in any manner should be replaced by the States, there is no provision for making sure that the grants were to be spent "to promote the liberal and practical education of the industrial classes in the several pursuits and professions in life." Indeed, the broad liberty given to the States to do about as they pleased in the establishment of such schools and colleges resulted in makeshift institutions in many States, and in no State was the original intent fully realized.

The so-called second Morrill act of 1890 gave further grants for agricultural education, but put no restrictions upon its use except the statement that if any part of the sum is diminished or lost or misapplied, it should be replaced by the State. It was further provided that the secretary of interior might withhold the appropriation if he determined that any State was not entitled to receive its share for any reason. An appeal lay in congress, however, to overrule the secretary of the interior. At most, all the secretary of the interior could determine were the mere formalities and not the real efficiency of the expenditure. Likewise in the act establishing the agriculture experiment stations—the Hatch act—the United States government donated money annually for the establishment of such stations in connection with agricultural colleges. Without any definite restrictions, succeeding acts carried the same provisions and gave no power to the national government to formulate or aid in the formulation of plans by which the expenditure was to be carried out or to determine the efficiency of the expenditure.

With the passage of the Smith-Lever act in 1914 a new principle was established in such grants. In this act it was recognized that the State and national government were to coöperate as partners in the promotion of a mutual object. The nation as the non-resident partner in effect said to the States, "We, in order to promote agricultural education for the farmer, will coöperate with you in the following way, namely: we will furnish a certain amount of money which will be

given to your State on condition that your State spends an equal amount and on condition also that the plans under which the money is to be expended shall be presented by the state authorities to the department of agriculture and receive their approval." The State as the resident in this scheme accepted the grants with the understanding that they would carry out the obligations imposed upon them by the grants.

This principle had been established in the grants for the maintenance of the state militia or national guard, but the conditions were somewhat different, namely: the duty was primarily a duty of the national government to maintain an army. The States had the authority to organize a militia. The national government merely recognized an opportunity to promote an army for its own purposes by aiding the States, and principally to make the discipline, equipment, etc., uniform so that the whole force could work together when mobilized for national service. The result of this coöperation has been effective. States have been compelled to maintain their militia at a good standard, and many cases have occurred where aid was withdrawn from the various units of the state militia because of inefficiency or inadequate equipment.

But in matters other than the army, the principle had not been applied until the passage of the Smith-Lever act. Since that time a new era has dawned in the matter of United States grants to the States in the aid of various projects. The good roads bill passed at the last session of congress is the most notable example. Instead of granting a sum of money to the States with the vague statement that it should be spent for the promotion of good roads, the act in question appropriated the sum of $85,000,000 to be expended in a coöperative enterprise between the States and the nation. After deducting the amount necessary for administering the law, the secretary of agriculture is directed to apportion the amount due to each State but no money shall be expended except under certain conditions. The law requires:

"That any State desiring to avail itself of the benefits of this act shall, by its state highway department, submit to the secretary of agriculture project statements setting forth proposed construction of any rural post road or roads therein. If the secretary of agriculture approve a project, the state highway department shall furnish to him such surveys, plans, specifications, and estimates therefor as he may require: Provided, however, That the secretary of agriculture shall approve only such projects as may be substantial in character and the

expenditure of funds hereby authorized shall be applied only to such improvements. Items included for engineering, inspection, and unforeseen contingencies shall not exceed ten per centum of the total estimated cost of the work. If the secretary of agriculture approve the plans, specifications, and estimates, he shall notify the state highway department and immediately certify the fact to the secretary of the treasury. The secretary of the treasury shall thereupon set aside the share of the United States payable under this act on account of such project, which shall not exceed fifty per centum of the total estimated cost thereof. No payment of any money apportioned under this act shall be made on any project until such statement of the project, and the plans, specifications, and estimates therefor, shall have been submitted to and approved by the secretary of agriculture.

"When the secretary of agriculture shall find that any project so approved by him has been constructed in compliance with said plans and specifications he shall cause to be paid to the proper authority of said State the amount set aside for said project: Provided, That the secretary of agriculture may in his discretion, from time to time make payments on said construction as the same progresses, but these payments including previous payments, if any, shall not be more than the United States pro rata part of the value of the labor and materials which have been actually put into said construction in conformity to said plans and specifications; nor shall any such payment be in excess of $10,000 per mile, exclusive of the cost of bridges of more than twenty feet clear span. The construction work and labor in each State shall be done in accordance with its laws, and under the direct supervision of the state highway department, subject to the inspection and approval of the secretary of agriculture and in accordance with the rules and regulations made pursuant to this act.

"The secretary of agriculture and the state highway department of each State may jointly determine at what times, and in what amounts, payments, as work progresses, shall be made under this act. Such payments shall be made by the secretary of the treasury on warrants drawn by the secretary of agriculture, to such official, or officials, or depository, as may be designated by the state highway department and authorized under the laws of the State to receive public funds of the State or county."

Whenever any road has been constructed under this coöperative plan its maintenance becomes a duty of the States and the civil subdivisions, and if the secretary of agriculture shall find that any road is

not being properly maintained, he gives notice to the highway commission and if within four months from the receipt of notice, the road has not been put in proper condition, then the secretary of agriculture shall refuse to approve any project for road construction in the State or civil sub-division, whose duty it is to maintain the road, until it has been put into a condition of proper maintenance. Here, then, is the coöperative arrangement worked out with extreme care to insure that the money of the national government granted to the States shall be expended efficiently for the purposes designed.

Likewise, in the bill reported by the national commission on vocational education to provide national aid, known as the Smith-Hughes bill, now pending in congress, national grants are proposed to the extent of $7,000,000 annually. Initiative to start educational projects subject to national aid is to come from the States which must organize a state board of education with power to formulate plans. When these plans are formed they are to be presented to the United States board on vocational education, which approves the plans if it finds them in accord with the act, and disapproves them if it does not so find them. Not a dollar of United States money may be expended on projects which are not in strict conformity with the proposed law, which specifies in considerable detail what the States may do and how they shall do it if they are to receive national aid.

Almost identical with this proposition is the Newland flood prevention act, which provides for a coöperative scheme through which the local governments will pay a part of the cost of projects, particularly valuable to them and that all plans for such work shall be approved by the United States authorities.

The plan of grants in aid as pointed out has just recently been made effective as to national grants, but has long had a salutary effect in promoting projects by the different States through aid to local governments in the promotion of objects in which the State and local governments had a mutual interest. State aid to schools built up and standardized education throughout most of the States. State aid and supervision has revolutionized road building in practically every State in the union. State aid for charities, health and conservation have also been prominent in some States. As a means of effective government, these grants are the most powerful engines, and yet the discussion of their effect seems to have escaped the American publicist. In England Mr. Sidney Webb contributed a few years ago a remarkable little book entitled *Grants in Aid* in which he pointed out the tremendous

effects of such grants in English government. Grants in aid in England have been, however, much larger than such grants in this country. The results which Webb finds for England are the results which might be attained in this country. As summarized by Webb these results are:

"They furnish the only practicable method consistent with local autonomy of bringing to bear upon local administration the wisdom of experience, superiority of knowledge and breadth of view which, as compared with the administrators of any small town, a central executive department can not fail to acquire, for the carrying into effect the general policy which parliament has prescribed. Without in the least believing that there exists in any government office a special fund of administrative wisdom or that the inhabitants of the smallest town may not know best how to govern that town, there are usually some lines of policy and some directions of expenditure which in the common judgment of the community are better than others. Yet experience shows that some local authorities will at all times be backward in discarding the worse and adopting the better alternative. . . . . Grants in aid should be so arranged as to give encouragement to expenditures which are deemed in the national interest desirable, rather than expenditures which are deemed undesirable." J. A. L.

**Amendment of Statutes.** *Constitutional Provisions.* In a country where the practice and product of legislative bodies is governed by a variety of constitutional provisions such as obtain in the States of the Union, one of the questions which must always command attention when proposals for uniformity are made is that of the feasibility of such uniformity under the existing constitution. It is the purpose of this note, therefore, to point out what are the constitutional provisions affecting the style of amendments to statutes, and to indicate to what extent uniformity of style in amending statutes is possible and feasible.

The style of an amendment has to do, not with the subject matter of which it treats, but with the form in which it is cast. The determination of the question to be considered must rest upon the answers to two other questions of a preliminary character, viz.:

1. What are the constitutional requirements with respect to the form in which amendments to statutes are to be cast?

2. What are the judicial conceptions that must be taken into account with regard to the form of amendment?

The constitutional requirements affecting the form in which amendments to statutes are cast may be classified into two groups: viz., the

*positive* or those which require that certain general forms of amendment be complied with, and the *negative* or those which prohibit the use of certain forms of amendment. In general there are two positive requirements relating to amendments only that appear in the constitutions of this country, though some of the requirements which apply to the form of other enactments apply to measures amending statutes as well. The first of the positive requirements is to be found only in the constitution of Tennessee, Article 2, Section 17, and reads: "All acts which . . . . amend former laws shall recite in their caption, or otherwise, the title or substance of the law . . . . amended."

Oddly enough, the very thing which is here imposed upon the legislature with respect to the form of amendments is the thing which fails to satisfy the constitution makers in very many of the other States. However, the practice of many of the other States conforms substantially to that which is so loosely laid down in the Tennessee constitution.

The other positive requirement is much more common and in various statements is to be found in the constitution of thirty of the States. It frequently reads as follows: "the section amended shall be inserted at length in the new act."[1] The principal variations in this statement are those in the constitutions of the States of Missouri and Virginia, both of which indulge in more detailed explanation of the intent of the constitution makers, and in the constitution of the State of Georgia, in which the phraseology of the provision renders the meaning more vague than in other States. There is, it will be noted, a surprising uniformity in the provisions of twenty-seven States, a uniformity which loses some of its force, however, in view of some lack of unanmiity on the part of the courts as to the character and meaning of this requirement.

The negative requirement with respect to the style of amendments to statutes is usually bound up with, and just precedes, the second of the positive requirements just mentioned. It varies in phraseology very little in the twenty-five state constitutions in which it appears. The following statement of it is taken from the constitution of Illinois and is typical: "No law shall be . . . . amended by reference to its title only."[2]

[1] Illinois Constitution, Article 4, Section 13.
[2] *Ibid.*

The principal variation from this wording is found in the insertion of the word "mere" before the word "reference," and the omission of the word "only" at the close. This variation is quite common. Exceptional wordings of the provisions are to be found in the constitutions of Missouri and Arizona, in each of which the meaning is expressed in fuller detail.

In addition to the constitutional provisions just cited which apply expressly to amending acts and no others, there are the constitutional requirements as to style which apply to all statutory enactments. The more common of these are those which provide that the enacting clause shall conform to specified phraseology, that no law shall be enacted but by bill, that no bill shall embrace more than one subject, and that the matter shall be expressed in the title. These provisions apply with the same force to enactments that seek to amend statutes as to other bills. The constitutions of nineteen States contain general requirements of this character, applicable in most cases to all acts, and in some cases to all but appropriation measures. In New York State, the twentieth, similar provisions obtain with reference to private and local bills only.

The purpose of these provisions is to prevent careless amendment, to check corrupt practices, to promote intelligent consideration of proposals submitted, and to simplify the statement of the statutes affected. There has been no conscious effort to seek uniformity in the style of amending statutes, or in the style of any legislation, and in practice uniformity does not, as a matter of fact, exist, even among States that possess constitutional provisions that are practically identical. This want of uniformity is due to a number of reasons. In the first place there has been little or no appreciation of the desirability of uniform practice; in the second place the constitutional provisions are broad enough to permit the adoption of supplementary rules widely differing in character in each of the two houses of the respective legislatures; in the third place the courts have failed to reach complete unanimity as to the meaning of constitutional provisions very similar in statement; and finally such variation in the phraseology as exists has contributed to the growth of variation in practice.

Judicial interpretation of constitutional provisions regarding the style of amendments to statutes has contributed somewhat to the absence of uniformity in practice. Even within States the courts have not failed to reverse interpretations once established and thus disturb legislative practice, though it should be said that in this case

the tendency has been to establish more liberal interpretations of the constitutional requirements. For example, the Indiana courts once held that the requirement that "the section amended shall be set forth . . . . at full length" required the insertion in the amending act of both the section to be amended and the section as amended. A later decision accepts the insertion of the section as amended as sufficient. Between States the variation in interpretation is, of course, to be expected. In one State the court holds that the entire section affected must appear in the amending act, in another a paragraph, if numbered, and constituted as a subdivision of the section in which the change occurs may be inserted in the amending act and satisfy the same constitutional provision. An Indiana decision holds that the presence of the word "mere" in the prohibition "No law shall ever be . . . . amended by *mere* reference to its title" requires reference to the title, thus making this statement of as much positive effect as the Tennessee provision noted in an earlier paragraph. In spite of the tendencies of some courts to emphasize technicalities, as in this case, their decisions are not of such momentous character even when they differ, because the constitutional provisions are so broad that it is difficult to see how the courts could prevent a considerable degree of uniformity if the legislatures were bent upon it. In fact the Indiana decision just noted, while appearing to split hairs, does not in reality impose anything upon the Indiana legislature that is not done in a good many States anyway, even where such decisions do not obtain, or where there are no specific constitutional provisions affecting amendments to statutes. On the other hand, if the Indiana court had held the contrary opinion it would not have prevented the Indiana legislature from conforming to the practice which the decision imposes upon it.

The question of the feasibility of a uniform style in amending statutes does not depend upon, though it must take into account, the practices regarding the citation of title, date, and number by which the original act, and acts amendatory thereof, may be readily located and identified. In this respect the practice of the States again varies greatly, and in this case the variation is due in part to the views of the courts as to what is the meaning of the word "law" or "section." Do these terms refer to the original enactment, or to the original enactment as amended by all subsequent changes, or only to the last amendment of the original enactment? All three views are expressed in the decisions of courts of different States, but it will be observed that if refer-

ence is made to the original enactment and to all subsequent amendments thereof the courts could hardly fail to be satisfied, whatever their views as to the meaning of the constitutional terms might be. Thus uniformity in the style of citation is not impossible. The question as to whether or not these States in which more lenient judicial opinion permits the first or third of the views indicated above to obtain will consent to adopt voluntarily the more exacting requirements which the second view imposes is one to which a negative answer will probably be returned.

In view of the foregoing the question of feasibility in the establishment of a uniform style of amending acts must be determined by the following:

1. How far do the constitutional provisions and judicial interpretations thereof permit of uniformity of style?

2. Is the degree of uniformity permitted great enough to be worth striving for—assuming that the results to be obtained from uniformity are desirable?

3. Are the advantages of uniformity of style sufficient to command the support and coöperation of a large proportion of American legislative bodies?

With respect to the degree of uniformity permitted it may be said that the constitutional requirements neither render it impossible, nor make its application a hardship. Substantial uniformity could be attained in all the States. Even the loosely drawn provisions in the Tennessee constitution accord with practice that is not uncommon; while the more detailed requirements of the constitution of Missouri might be accepted by the legislatures of other States without seriously altering the practice of many of them, or changing their constitutions, or bringing them into disfavor with their respective courts. The following shows the more important practices which might become uniform without encountering constitutional requirements or judicial veto:

1. Amending acts to be passed by bill.

2. Amending acts to embrace but one subject and that to be clearly expressed in the title.

3. Citation of the statute to be amended to be sufficient to identify it. In case of statutes previously amended the citation to include the original act and all amendments thereto.

4. A statement of the changes to be made, together with the phraseology of the statute or section to be amended and the same as amended. It is possible the latter alone would suffice.

The degree of uniformity indicated as permissible offers advantages from the standpoint of the legislatures and from that of the courts. It standardizes the form and style of amendment in the former, eliminates questions of constitutionality of form from the debate, and sets a premium upon intelligent and efficient efforts to amend former statutes. It will largely relieve the courts of the burden of passing upon questions involving the style of amending acts. The importance of these advantages taken apart by themselves might not be commensurate with the amount of effort that would be necessary to obtain their recognition in an independent movement for that purpose. But as a part of a larger and more general movement to improve the conditions of statute drafting and to standardize them, these advantages justify the efforts to realize a much larger degree of uniformity than now exists.

Whether there is any ground for believing that uniformity in the style of amending acts is a proposition that can command the interest and coöperation of any large proportion of American legislatures appears questionable. The constitution of North Carolina makes no provision whatever for the style of any legislation. The constitutions of seventeen States omit to mention the style of amending bills in particular. The freedom which these constitutions and others with only very limited provisions permit to the legislatures of these States will probably not be surrendered in all of them, no matter how great the pressure. On the other hand it should be noted that actual legislative practice with respect to the style of acts amending statutes often conforms to features embodied in the uniformity proposals herein made. This is true in some of the New England States, notably Massachusetts, the constitution of which does not limit the legislature in this particular.

In summarizing one may conclude: (1) that some tendencies toward uniformity in style in amending statutes are already noticeable both in the constitutional provisions and in the voluntary practices of legislatures in States where such provisions do not exist; and (2) that the constitutional requirements and judicial interpretations thereof do not conflict seriously with each other. Therefore, the feasibility of establishing a much greater degree of uniformity of style, when considered as a part of a general movement for the betterment of legislative practice, appears to be demonstrated.

Russell McCulloch Story.

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# NEWS AND NOTES

## PERSONAL AND BIBLIOGRAPHICAL

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The thirteenth annual meeting of the American Political Science Association will be held December 27 to 30, at Cincinnati. The American Historical Association will hold its annual meeting at the same time and city, and several joint sessions will be held. The program, as thus far arranged, will be as follows: Wednesday evening, December 27, "The Veto Power of the Governor," papers by Prof. John A. Fairlie and F. A. Cleveland, discussion by Governor Frank B. Willis of Ohio, N. H. Debel, Edgar Dawson and Chester Lloyd Jones. On Thursday morning, there will be two simultaneous sessions, one on "Municipal Administration," with papers by ex-Mayor Henry T. Hunt of Cincinnati and Henry M. Waite, city manager of Dayton, and one on "Latin-American Politics," with papers by F. A. Pezit, ex-minister from Peru and George E. Roberts, to be followed by discussion. On Thursday noon there will be a joint luncheon with the historical association. On Thursday afternoon there will be a session on Social Legislation, with papers by Prof. Samuel L. Lindsay and Thomas I. Parkinson; and at the same time a round table conference on the teaching of civics in secondary schools. At a joint session on Thursday evening, the annual addresses of the presidents of the two associations will be given. The Friday morning session will discuss the subject of military administration in the United States. On Friday noon a number of group luncheons are planned, to discuss the teaching of constitutional law, book reviewing in political science, bureaus of reference and research, training for public service, and requirements for the doctor's degree in political science.

The business meeting of the association will be held on Friday afternoon; and on Friday evening there will be a session on the United States national administration. On Saturday morning there will be another joint session with the historical association on the Philippines; and on Saturday noon a joint luncheon with the American

Association for Labor Legislation for the discussion of social insurance in the United States.

Early in December programs will be mailed to members of the political science association giving information as to the titles of papers, names of speakers, railroad and hotel arrangements and social functions.

A general index to the ten volumes of proceedings of the American Political Science Association and to the first ten volumes of the American Political Science Review is being prepared, and will be issued as a supplement to the Review.

Dr. Edwin M. Borchard has resigned as law librarian of congress to accept a position as counsel to the National City Bank of New York.

Mr. J. S. Young, professor of political science at the University of Minnesota, is away on sabbatical leave for the year. He will spend most of his time at the Congressional Library in Washington.

Mr. C. D. Allin, associate professor of political science at the University of Minnesota, has been advanced to the position of professor of political science.

Mr. William Anderson, who held the position of assistant in government at Harvard last year, has been called to the University of Minnesota with the rank of instructor in political science.

Mr. B. A. Arneson, Ph.D., University of Wisconsin, has been appointed an instructor in political science at the University of Minnesota.

Mr. S. A. Park, assistant in political science in the University of Wisconsin has been appointed to an assistant professorship in the University of North Dakota.

Mr. Henry R. Trumbower, of the department of political economy of the University of Wisconsin, has been appointed a member of the railroad commission of that State.

Prof. Paul S. Reinsch, American envoy extraordinary of the United States to China, has been instrumental in organizing the Chinese Political Science Association; he acts as its first vice-president. The association publishes a quarterly which will be devoted to political science and social developments with special reference to China, the first issue appearing last April.

Dr. A. C. Millspaugh, Ph.D., Johns Hopkins University, has been appointed acting-professor of political science at Whitman College, Washington.

Prof. J. M. Callahan, head of the department of history and political science at West Virginia University since 1902, has been elected dean of the College of Arts and Sciences of that institution. He will, however, continue his lectures in two advanced courses.

At the opening of the current academic year, Dr. John E. Briggs and Dr. Ivan L. Pollock were appointed assistants in political science at the State University of Iowa.

Mr. W. Kendall Dingledine has been made instructor in political science at the University of Virginia.

Prof. Thomas H. Reed, of the department of political science of the University of California, who drew up the original draft of the new city manager charter of the city of San José, Cal., was chosen city manager following the adoption of the charter.

Prof. Charles A. Beard, of Columbia University, has given up undergraduate work at Columbia University to devote himself entirely to the post-graduate school.

Prof. Howard L. McBain of the same university has in like manner given up his undergraduate lectures on municipal government to devote his attention to graduate study. Prof. Munro Smith will be on leave of absence for the second half year. Leyton Carter, a graduate of Oberlin and candidate for the doctor's degree at Columbia, will be an assistant in the department of politics for the coming year; and Luther H. Gulick, a graduate of Oberlin, and F. Stewart Fitzpatrick of Trinity College will act as readers.

A new department of political science has been established this year at the University of Wyoming, in charge of Prof. H. C. Dale, A.M., Harvard, 1908, who was formerly connected with the Utah Agricultural College and with Washington University, St. Louis.

The University of Wyoming announces this year a definitely organized pre-legal course covering two collegiate years, and preparing students for admission to standard law schools. Lectures in the course on introduction to law will for the most part be given by members of the Wyoming bar.

The problem of assisting in the educational training of foreigners who are applicants for naturalization is being taken up by the University of Wyoming. Special classes in coöperation with the naturalization service of the department of labor are to be formed in Laramie and Cheyenne and perhaps in other places. This work is a part of the extension service of the university.

The Third National Conference on Universities and Public Service, E. A. Fitzpatrick, Box 380, Madison, Wis., secretary, will meet at Philadelphia on November 15, 16.

The Association of Urban Universities, F. B. Robinson, College of the City of New York, secretary, will hold its annual meeting in New York, November 17, 18.

The National Municipal League will hold its annual meeting at Springfield, Mass., November 23, 24, 25. During the same week meetings will also be held in Springfield by the City Managers' Association and a number of other organizations.

The annual lectures on the Barbour-Page Foundation at the University of Virginia will be delivered in January by Prof. John H. Wigmore, dean of the law school of Northwestern University, whose subject will be "The Growth of Law." Last year's lectures on "The Origin and Formation of the Triple Alliance," by Prof. Archibald Cary Coolidge of Harvard University, are in train for early publication.

The report of the committee of the American Political Science Association on the *Teaching of Government* (The Macmillan Company) includes four parts: (1) recent progress in the teaching of government;

(2) teaching of civics in secondary schools; (3) suggestions as to courses of study; and (4) teaching of political science in colleges and universities. An appendix summarizes the reports of committees in twenty States on the teaching of civics in elementary and secondary schools.

The fourth volume in the series of guides to foreign law, published by the law division of the Library of Congress, will come from the press about the first of January. It is a *Guide to the Law and Legal Literature of Argentine, Brazil and Chile*, prepared by Dr. Edwin M. Borchard, law librarian.

*Principles of American State Administration*, by Prof. J. M. Mathews of the University of Illinois, is the title of a new work which is in train for publication by Messrs. D. Appleton & Company. It is a comprehensive treatise on the executive department of the American state governments, and is divided into four parts, as follows: Part I, General Principles; Part II, The Organization of the Administration; Part III, The Functions of the Administration; Part IV, The Reorganization of the Administration.

*South America: Study Suggestions*, by Harry Erwin Bard (D. C. Heath and Company) is a little booklet containing a short syllabus and a bibliography of books on South America, with brief descriptive notes.

*The Voter in Command* is the title of a small volume by J. Albert Stowe (Newark, 1916, pp. 62) dealing with the commission form of government in New Jersey. The author criticizes the Walsh act of 1911, shows its good features, and points out the various ways in which it has failed to meet the needs of the situation in New Jersey.

Two recent bulletins of the Indiana Bureau of Legislative Information deal, one with *The Budget* by William T. Donaldson, assistant budget commissioner of Ohio, and the other with the *Control and Supervision of State Institutions*. Both pamphlets are clearly written and are good models of the way in which administrative reforms may be presented to the public as practical problems within the grasp of the average voter.

Bulletin No. 10 of the Nebraska legislative reference bureau deals with *The Torrens Land Transfer Act*, including the Nebraska act of

1915, a historical sketch of the Torrens system, arguments for and against, and a bibliography. A new and revised edition of the valuable bulletin on *Legislative Procedure* is announced.

The legislative reference division of the Texas State Library has recently issued a bulletin on *Officers, Boards, and Commissions of Texas*. The bulletin was prepared by Frank M. Stewart, assistant in the school of government in the University of Texas, and is the first of a series in preparation by the bureau of research on state government at the university.

A commission on economy and efficiency has been appointed by Governor Stuart of Virginia in pursuance of an act of the general assembly. The commission had its inspiration in the financial stringency that the budget-makers of the legislature faced at the opening of the past session, and it is charged with the duty of making a careful and detailed study of both state and local government to be followed by a report suggesting methods of more efficient and economical administration.

*Minnesota Municipalities*, the new bi-monthly magazine devoted to municipal progress in Minnesota, contains in its second (April) number an article by Prof. W. A. Schaper on "The Need of a Constitutional Convention in Minnesota" in which the writer advocates a systematic revision of the state constitution, pointing out that the present amending process, which requires for the adoption of an amendment a majority vote of all the electors voting at a general election, is a block to all constitutional progress.

A vast storehouse of information on municipal administration in England and Wales will be found in the *Encyclopedia of Local Government Law*, to and including 1915, edited by Joshua Scholefield (New York, N. A. Phemister Company, 1916, 13 volumes, price $85). The work shows the trend of advanced legislation on municipal government in England, and covers such topics as Sanitation, Regulation of Street Traffic, Prisons, Lodging Houses, Factories and Work Shops, Housing of the Working Classes, Child Labor, etc.

Princeton University has recently entered the field of university extension work by its coöperation with the League of New Jersey

Municipalities established last spring. The league includes in its plans a bureau of municipal research and information which is to be organized as part of the Princeton University library, so that from the point of view of the university the bureau will serve as a municipal reference section for the use of faculty and students, while from the point of view of the league the bureau will furnish reports on any subject in the field of municipal government upon request of any of its members. The director of the bureau will be an officer of the league and at the same time a member of the university faculty.

The experience of western Canada in the municipal ownership and operation of public utilities is presented by A. G. Christie in a pamphlet entitled *The Municipally-Operated Electrical Utilities of Western Canada*, being a paper read before the convention of the American Institute of Electrical Engineers in February, 1916. The author discusses the costs and methods of financing the utilities of various cities, and while not formally endorsing public ownership, he finds that the utilities in question have on the whole been conservatively managed and have been practically free from political influence.

An interesting discussion of the rule of *stare decisis* in constitutional law, and of the force of precedent and the power of the courts to make law is found in a pamphlet by Samuel B. Clarke entitled "What may be done to enable the courts to allay the present discontent with the administration of justice?" (New York, 1916, pp. 41). The pamphlet is a reprint from the *American Law Review*, and advocates an amendment to the constitution of New York providing that the interpretation by the courts of the constitution and statutes of the State be in each case without prejudice from anything decided in any other case, although the court may give due weight to precedents as evidence of the law.

A new edition of Dante's *De Monarchia* has appeared from the Clarendon Press (Oxford, 1916, pp. xxxi, 339–376 of the Oxford text). The text is edited by Dr. E. Moore and is preceded by an introduction on the political theory of Dante by W. H. V. Reade. Mr. Reade points out that the *De Monarchia* is less a political pamphlet giving expression to the views of a party than the vision of an exile and a poet who would secure the triumph of justice and the peace of warring peoples by the establishment of an absolute monarchy having jurisdiction over

all nations by the authority of God. By contrast with Machiavelli, Dante is the advocate of international unity (however mistaken he may have been in his method of attaining it) whereas the author of *Il Principe* is the prophet of national independence with its resultant international anarchy.

A useful discussion and criticism of present political conditions in India is to be found in volume v, number 1, of the University of Iowa studies in the social sciences, entitled *Some Aspects of British Rule in India* by Sudhindra Bose, lecturer on oriental politics in the state university. While the author is not unappreciative of the many solid advantages of the British administration, his chief object is to point out certain evils in the British rule and to suggest constructive reforms. The volume may be read in connection with *Young India*, an interpretation and a history of the Nationalist movement from within, by Raya Lajpat (Huebsch, 1916, pp. 301) in which a leader of that party presents the historical background and the story of the movement, and sets forth what India wants and why she should get it.

Though historical in character and popular in its presentation there is much interesting information in the volume entitled *Presidential Nominations and Elections*, a history of American conventions, national campaigns, inaugurations and campaign caricature, by Joseph B. Bishop (New York, Scribner's Sons, 1916, pp. x, 237). The early nominating conventions are described as well as the pre-Revolutionary caucus (that inevitable aristocratic concomitant of democracy) and there is an orderly and vivid presentation of the successive battles for political power which mark the long contest between the opposing ideals of Hamilton and Jefferson.

As in the author's earlier volume, *The People's Government*, there is much sound thinking on the subject of American political ideals in *Americanism, What It Is* by David Jayne Hill (New York, D. Appleton and Company, 1916, pp. xv, 280). The opening chapter on the American conception of the State points out the distinctive contribution of America to political theory and practice, namely that while the will of the people should be in general the law of the State, yet there were certain human rights possessed by the individuals composing the State which were so sacred and so essential to human happiness that they should never be taken away even by the "law of the land" enacted by

an omnipotent legislature. This protection of individual rights against encroachment even by a majority of the people, and the constitutional rule that the individual may sue for those rights in court, setting up the fundamental law as against the temporary whim of a popular assembly, constitutes the essence of Americanism. But this traditional system of government by law is, says the author, now being attacked by a spirit of class antagonism which "aims to control the State by massing its forces in powerful organizations with the purpose of changing the laws, and even the constitution, in the interest of special classes." In the chapter on the "Tests of American Democracy," the author asserts that the only hope for the survival of Democracy as against its rival Imperialism, whether in the form of single rulers or of majorities, is in the exercise of self-restraint on the part of the citizen body by putting a voluntary limitation upon its own power.

The interrelations of sociology and politics resulting from the gradual extension of the field of social legislation are becoming daily more evident, and are claiming a place in the literature of both subjects. A small text-book on *Sociology* in the National Social Science Series by John M. Gillette (Chicago, A. C. McClurg and Company, 1916, pp. 159), while prepared for the general public as an introduction to the study of sociology, will be useful in acquainting the student of politics with the terminology (alas, already become esoteric) and with the point of view of the sociologist. *Social Problems* by Ezra Thayer Towne (New York, The Macmillan Company, 1916, pp. xviii, 406) contains chapters on Immigration, Child Labor, The Sweating System, Labor Organizations, Crime and Punishment, the Liquor Problem, and other related subjects, most of which are the object of the newer social legislation in the various States. The questions, references and supplementary readings at the end of each chapter give an additional value to the book. *Poverty and Social Progress* by Maurice Parmelee (New York, The Macmillan Company, 1916, pp. 477), in spite of its tendency to dogmatize and to pass final judgments where there is much room for doubt, contains much valuable material concerning the causes and conditions of poverty and the possible remedial and preventive measures. The chapters dealing with social insurance, wage legislation, the labor supply, industrial democracy and political reorganization will be found of particular interest.

Of considerably greater value than his previous volumes on the law of labor is the new volume by George G. Groat entitled, *An Intro-*

*duction to the Study of Organized Labor in America* (New York, The Macmillan Company, 1916, pp. xv, 494). The author is convinced that there is need of a more thorough understanding of labor organizations which constitute the center of the problem of labor and which, he says, embody "the aggressiveness, the restlessness, the hopes, the fears and the ideals of American laborers." The background of organized labor is first presented and this is followed by the structure of the various organizations. "Collective Bargaining" discusses the strike, arbitration, the boycott, the closed shop and other similar measures resorted to in furtherance of the aims of organized labor. These measures are discussed from their legal as well as their social and economic aspect, and this chapter as well as the following chapter on "Political Activity" will be of considerable value to the student of politics. The author admits that the volume may seem to place undue emphasis upon a side favorable to the unions, but he disclaims a thick-and-thin support of them regardless of what they do, and while believing that they have a heavy responsibility he "shares with many a doubt as to the fulness with which they meet such obligation."

A useful sketch of *Russian Foreign Policy in the East* comes from the pen of a Russian, Mr. M. S. Stanoyevitch of the University of California (Oakland, Liberty Publishing Company, 1916, pp. viii, 38). "Russia in the Near East," "Russia in the Middle East" and "Russia in the Far East" constitute the first three chapters, and a final chapter discusses Russian policy after the Japanese War. The author's attitude, however, is not critical, and while we may pardon a general tendency to justify the policy of one's own country it is difficult to do so where that involves a slur upon the policy of other nations, as in the characterization of the demands of the western powers for compensations and guarantees after the Boxer riots as "inordinate" when Russia was herself planning annexation meanwhile.

Houghton Mifflin Company announce the publication in October of the second volume of *International Cases*, by Ellery C. Stowell and Henry F. Munro, dealing with the subject of "War and Neutrality." The first volume, dealing with "Peace," appeared in April. With the first volume is included a pamphlet entitled "Parallel Readings," prepared by the authors for use in their classes, and containing a list of references to some of the more important text-books in the English language.

Dr. Lawrence B. Evans has followed up his collection of cases on constitutional law by a new volume of *Leading Cases on International Law* (Chicago, Callaghan and Company, 1916, price $2.50). The editor draws his cases from a wide variety of tribunals and has annotated them with references to the leading commentaries and to numerous other cases. While the majority of the cases deal with more settled doctrines of international law, a number of recent cases are included showing the modern application of those doctrines.

Ex-senator Elihu Root's distinguished services in the field of international law and foreign affairs give to the new collection of his *Addresses on International Subjects* (Harvard University Press, 1916, pp. 463) a value and significance entirely unaffected by the bias of partisan politics. His addresses as president of the American Society of International Law are of a strictly scientific character, though frequently illuminated by observations showing the result of long familiarity with the business of diplomatic intercourse, while his addresses as secretary of state and as United States senator are marked by an idealism which has won for Mr. Root praise alike from political friend and foe. Perhaps the work for which he will be best remembered will be his continued efforts to advance the cause of Pan-Americanism.

Baker, Voorhis and Company announce a new (fifth) edition of Wheaton's *International Law* revised throughout, enlarged and rewritten by Coleman Phillipson with an introduction by Sir Frederick Pollock (in one volume, price $11.00). In the present edition the numerous references given by Wheaton to the works of the classic writers on international law have been retained, while many subjects which were treated sparsely in the previous edition are covered with comparative fulness since they have become important as a result of the labors of the Second Hague Conference and the London Naval Conference. The same publishers likewise announce the publication of *The Prize Code of the German Empire*, as in force July 1, 1915, translated and edited by Charles H. Huberich and Richard King (pp. 200, price $2.50).

A very sane bit of thinking on the subject of international relations is presented in the slender volume entitled *The Dangers of Half-Preparedness* by Norman Angell (New York, G. P. Putnam's Sons, 1916, pp. 129). The meaning of the somewhat misleading title is that to

be adequately prepared against attack from without we need something more than armaments alone; we need an understanding on the part of our neighbor of the foreign policy which our armaments are intended to support, so that instead of anticipating that our armaments are to be used against him and building equally powerful armaments in turn he will coöperate with our policies (assuming them to be just) or at any rate will be disarmed of any suspicion regarding them. The author constantly refers to concrete instances of wars during the nineteenth century which occurred simply because the nations instead of defining their policies and making clear the purposes of their armaments preferred to seek protection in a balance of power which by its very nature could not be stable. The author's closing plea for a more earnest deliberation by the American people upon the future policies of their country is a very stirring one.

In his volume on *The Diplomatic Background of the War, 1870-1914* (New Haven, Yale University Press, 1916, pp. xv, 311), Prof. Charles Seymour enters a comparatively new field occupied hitherto by a few excellent general histories, such as those of Phillips, Rose, Andrews, and Hazen, and by biographies and special treatises not generally accessible. Beginning with a study of Bismark's creation of the Triple Alliance and of the Dual Alliance which followed it, the author passes to a discussion of German world policy both in respect to its economic and its moral factors. This is followed by a consideration of British foreign policy and of the diplomatic revolution by which England put aside her policy of opposition to France and Russia. The conflict of the two alliances is next described, and the closing chapters deal with the Balkan wars and the crisis of 1914. In addition to a brief bibliography arranged for each individual chapter the author gives frequent references in foot-notes, though for the most part to secondary sources. While there is still room for more exhaustive work in this field, based upon original documentary evidence, Mr. Seymour's volume will do much to facilitate the study of diplomatic history, and to arouse an interest in a subject which must henceforth have a more prominent place in the curriculum of universities.

Henri La Fontaine, senator of Belgium, has proposed a plan for world organization in the interest of peace, under the title *The Great Solution —Magnissima Charta* (World Peace Foundation—Boston). This includes a draft of the proposed charter and a series of supplementary

conventions, preceded by a discussion of the plan presented. The charter contains declarations on the rights and duties of states, the conference of states, judicial organization, international administration and general and transitory provisions. The Conference of States is to combine diplomatic and legislative characteristics. But the plan contains a fundamental weakness in proposing to continue the fiction of the equality of states, by giving each state only one vote. A proposal that a majority of states may adopt a convention binding the majority, but not the opposing minority, is set forth as a novelty; whereas a majority or even a minority of states may now agree to any convention as between themselves. The plans for judicial and administrative organization involve the reconstitution and development of existing institutions.

*The Restoration of Europe* by Dr. Alfred H. Fried (New York, The Macmillan Company, 1916, pp. xiv, 157) is an exceptionally interesting contribution to the daily increasing literature in which constructive proposals are offered as a basis for the future peace of the world. The author is the well-known editor of the pacifist journal, *Die Friedenswarte*, and his long service in the cause of scientific pacifism as well as the fact that he was the recipient of the Nobel Peace Prize in 1911 will win for him a sympathetic hearing. It may be difficult for many to acquiesce in his exoneration of Germany and Austria from any special blame in bringing on the war, but few will deny the justice of the basic idea of the volume, that if we distinguish the underlying causes from the immediate occasions of the war we find that the present war is the logical outcome of the kind of "peace" which preceded it, a peace which in view of the condition of international disorganization which prevailed was really a state of latent and constantly threatening war. While disclaiming the need of a political federation of Europe the author advocates a closer economic association in the form of a coöperative union, for which he considers the Pan-American Union a valuable precedent, and suggests a general European alliance to replace the system of the balance of power, together with "some method" of international control by which armaments could be reduced by the individual nations without danger from a surprise attack. In conclusion the author distinguishes between the pacifism of unconditional disarmament and the pacifism of international organization as a condition precedent to disarmament.

## DECISIONS OF AMERICAN COURTS ON POINTS OF PUBLIC LAW

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*Advertisements—Licensing.* State vs. Murphy. (Connecticut. July 27, 1916. 98 A. 343.) It is not an arbitrary and unwarranted interference with a lawful business to require the issuance of a license and the payment of a license fee for the display upon real estate of advertisements containing more than four feet of surface. Such a regulation is within the taxing power of the legislature. The taxing power is vested in the legislature and it may exercise such power for lawful purposes in its discretion both as regards the subject matter of taxation and the extent and manner of the tax, except as constitutional limitations may intervene. And such power extends to persons, property, possession, franchise and privileges, occupations and rights, and reaches every trade or occupation, every object of industry, use or enjoyment. The display on a billboard or similar advertisement upon real property is a proper subject of taxation and the taxation thereof is a reasonable exercise of the taxing power.

*Advertisements—Prohibiting Affixing on the Palisades.* State vs. Lamb. (New Jersey. June 6, 1916. 98 A. 459.) To prohibit by legislative act the painting or printing upon or, in any manner placing upon or affixing any advertising notice to any of the steep rocks called the Palisades, on the Hudson River, is unconstitutional as depriving the owners of lands situated in the Palisades from using such lands for the purpose of advertising, when the signs do not endanger public safety or affect the health or morals of the community.

*Advertisements—Publication of False and Fraudulent.* Jasnowksi vs. Connolly. (Michigan. June 2, 1916. 158 N. W. 229.) "An act to regulate and prohibit false, deceptive, fraudulent and misleading advertising in newspapers, periodicals or other publications or by circulars or hand bills," is not unconstitutional as embracing two inconsistent subjects, prohibition and regulation, since the word "regulate" may be disregarded as surplusage. Nor is it unconstitutional for the same reason because the inhibition is extended to books, which are not mentioned in its title, since, under the rule of *ejusdem generis*, books are included with other publications.

*Aliens—Chinese Persons.* Ong Seen vs. Burnett. (United States. May 8, 1916. 232 Fed. 850.) The mere fact that a Chinese person admitted into the country and domiciled as a merchant thereafter becomes a laborer does not justify his deportation under a treaty between China and the United States authorizing the deportation of Chinese persons who are laborers. But the fact that the Chinese person, almost immediately upon his arrival, engaged in the occupation of a peddler, instead of a merchant, warrants a finding that he was admitted as a merchant under fraudulent respresentations, it appearing that he never engaged in business as a merchant.

*Commission Government—Abandonment.* State ex rel. Terry vs. Lanier. (Alabama. May 18, 1916. 72 S. 320.) An act providing a mode whereby cities, after an election on the question, may abandon the commission form of government and return to the aldermanic form, and providing for the retention in office of all employees, other than those whose offices are abolished, until their removal should be provided for by the mayor and aldermen of the city, does not violate a provision of the constitution providing for the impeachment of officers, as the act abolishes and does not remove the officers not retained, and as the officers retained whose offices were created or abolished by the commissioners have no fixed statutory office or term, and hence are not officers protected by the constitution. The commissioners have no vested right in their offices, which may be abolished at the will of the legislature.

*Commission Merchants—Regulation.* State ex rel. Brewster vs. Mohler. (Kansas. June 29, 1916. 158 P. 408.) An act which regulates the business of commission merchants who sell farm produce for resale is not unconstitutional as discriminatory or class legislation. And it is a valid exercise of the state's police power to require such commission merchants to make and furnish to the consignors of goods intrusted to them for sale on commission an accurate and detailed account of all the pertinent facts relating to such sales on commission; and the expense of making such a record and account is a proper charge upon the business and is not confiscatory.

*Contempt of Court—Punishment.* Flannagan vs. Jepson. (Iowa. July 7, 1916. 158 N. W. 641.) It is an unconstitutional authorization of infamous punishment to provide imprisonment at hard labor

as punishment for second or subsequent contempts for violation of liquor injunctions, in a proceeding not upon indictment or information. A crime is an offense against the sovereignty of a state for which upon conviction punishment is imposed, while a contempt is an offense against the authority of the court. So a statute imposing imprisonment at hard labor for contempt is unconstitutional as subjecting the accused to involuntary servitude for an offense not a crime.

*Courts—Reversal of Former Decisions.* Grifenhagen vs. Ordway. (New York. July 11, 1916. 113 N. E. 516.) A court should not undermine the law by reversing a former decision of that court unless it has been demonstrated to be erroneous through failure to consider a statute, prior decision, material fact, or other substantial feature, or unless through changed conditions it has become obviously harmful or detrimental to society. Certainty is of the very essence of the law. Shifting or changing rules or principles do not constitute law. The avoidance or prevention of litigation through the establishment by the courts of fixed and certain rules is a useful and beneficent effect of the litigations had.

*Dentistry.* People vs. Blair. (Michigan. July 21, 1916. 158 N. W. 889.) The title of an act providing for the examination, regulation, and licensing of persons engaged in the practice of dentistry, and for the punishment of offenses against the act, is broad enough to admit of an amendment, made under the original title, prohibiting any qualified physician or surgeon from extracting teeth except in certain emergencies, and forbidding such physician to advertise dental operations of any kind.

*Elections—Absent Voting.* Straughan vs. Meyers. (Missouri. July 3, 1916. 187 S. W. 1159.) An act regulating the manner in which voters who are absent from their place of residence may cast their votes, does not violate the constitutional provision requiring as a qualification to vote that the elector shall have resided in the county, city, or town where he shall offer to vote at least sixty days immediately preceding the election, since under such law, which specifically provides that the ballot shall not be deposited in the ballot box nor entered upon the poll books, but that the same shall under certain safeguards be transmitted to the county clerk and be there counted, the vote takes effect as required by the constitution, only in the place of his resi-

dence, although the voter exercises the means of voting elsewhere. Such an act is not class legislation because it applies to all persons alike who by reason of their business duties are unavoidably absent from the county.

*Elections—Corrupt Practices.* State vs. Pierce. (Wisconsin. June 13, 1916. 158 N. W. 696.) It is a violation of the constitutional provision providing that every person may freely speak and publish his sentiments, and prohibiting laws restraining the liberty of speech or the press, to forbid a person, not a candidate or a committeeman, spending money outside his own county for political purposes. Under the terms of such an act a man, or body of men, who are honestly convinced of the necessity of a change of policy in the government, commit a crime if they spend any money in another county than their own in bringing their views to the notice of the voters of such other county. Under such a law no pioneer in any reform which depends for its success on a change in the law could leave his own county and communicate his sentiments at his own expense to his fellow citizens in other counties without committing a crime. Under such a law no propaganda for better laws and better political conditions which has not been formally taken up by a political party can ever be carried on, as it is always highly improbable that a political committee will take up such a work for the very good reason that the party organization has not endorsed the doctrine.

*Elections—Free and Open.* Neelley vs. Farr. (Colorado. June 21, 1916. 158 P. 458.) Where coal companies connived with the local authorities to secure the creation of election precincts bounded so as to include the private property of the companies only, and with lines marked by their own fences or guarded by their own armed men, from which the public was excluded; and secured the election of their own employees as election officials, made the registration list from their own pay rolls, and kept them in their private places of business, and prohibited all public investigation as to the qualifications of the persons registered as electors within such precincts, the conduct of the election therein was such as to invalidate the entire poll. It is the essence of free elections that the right of suffrage be untrammeled and unfettered, and that the ballot represent and express the electors' own intelligent judgment and conscience. And there could be no free election within the precincts and under the conditions described.

*Elections—Nomination by Fee.* Patton vs. Withycombe. (Oregon. July 14, 1916. 159 P. 78.) A provision that in addition to the method of nomination by petition a person may file a declaration of candidacy and by the payment of a fee become a candidate for office, is not unconstitutional. Such an act does not in any way add to the qualifications of an elector desiring to become a candidate. No person is obliged to pay a fee, for the method requiring a fee is optional. The elector may create the right to become a candidate, either by a mere declaration and the payment of a fee, or by a petition without a fee, and a statute requiring the payment of a reasonable fee places no obstacle or impeachment in the way of a person whether he be rich or poor, so long as another method like the one here requiring no fee is open to him.

*Explosives—Carriage of—International Law.* Horn vs. Mitchell. (United States. April 27, 1916. 232 Fed. 819.) It is no defense to a charge of carrying explosives in a passenger vehicle operated by a common carrier in interstate commerce, that the accused was an officer in the army of a foreign country engaged in war, and that the explosive was so carried for the purpose of being used in an alleged act of war in the enemy's territory. The mere fact that the accused held a commission in the army of his country raises no presumption that he was acting under the authority of his government, so as to raise any question of international law.

*Foods—Sale of Eggs.* Ex parte Foley. (California. June 21, 1916. 158 P. 1034.) An act declaring that any dealer selling eggs imported from without the United States shall stamp each egg "Imported" and shall display at his place of business a sign "Imported eggs sold here," but which does not require the dealer to disclose the age of his imported eggs, is not, in view of the fact that in portions of the State eggs can be imported from foreign countries in a shorter time than they can be brought from other portions of the State and the United States, a valid exercise of the police power, and is void as interfering with foreign commerce, it being obvious that the purpose of the statute was not to protect the public health against unwholesome eggs, but merely to prejudice dealers against imported eggs in favor of the local product.

*Foreign Corporations—Right of State to Exclude.* Citizens' Ins. Co. vs. Hebert. (Louisiana. June 5, 1916. 71 S. 955.) A State has the right to exclude a foreign insurance company that has established a business in the State. The permission previously given such a com-

pany to do business in the State is not a vested right, nor is such permission a contract.

*Highway Districts.* Rinder vs. City of Madison. (Wisconsin. June 13, 1916. 158 N. W. 302.) The making of highway districts coextensive with counties does not unconstitutionally deny to cities the equal protection of the laws or lack uniformity, although taxing cities for improvements not directly benefiting them. If a rule for taxation should be adopted which limits the right of taxation for public improvements to such property only as it can be shown is directly benefited by such improvements, it would result in endless confusion and litigation, and render void many acts for the government of towns and counties. It is for the legislature to fix the limits of taxing districts and not for the courts.

*Housing.* Byrne vs. Maryland Realty Co. (Maryland. June 23, 1916. 98 A. 547.) A housing law for the city of Baltimore containing a provision that no dwelling house shall be erected within a defined section of that city, unless such dwelling house be constructed as a separate and unattached building, and, if of frame construction, to be at least twenty feet apart, and, if of stone or brick construction, at least ten feet apart, is unconstitutional. The owner of a lot within that section of the city cannot be deprived of his right to improve it in violation of the provisions of this act, where in the violation there is nothing inherently menacing the public health or safety, and since property rights cannot be invaded for purely aesthetic purposes under the guise of the police power.

*Housing—Erection of Store in Residential District.* State ex rel. Lachtman vs. Houghton. (Minnesota. July 28, 1916. 158 N. W. 1017.) A municipal ordinance prohibiting the erection of a store building upon land within a residential district cannot be sustained as a legitimate exercise of the police power. The use which an owner may make of his property is subject to any reasonable restrictions and regulations, imposed by the legislative power, which tend to promote the public welfare or to secure to others the rightful use and enjoyment of their own property; but only such use of property as may produce injurious consequences, or infringe the lawful rights of others, can be prohibited without violating constitutional provisions that the owner shall not be deprived of his property without due process of law.

*Indians—Jurisdiction of Federal and State Governments.* United States ex rel. Lynn vs. Hamilton. (United States. November 4, 1915. 233 Fed. 685.) While maintaining their tribal organizations and residing on reservations set apart for them by, or with the consent of, the general government, Indian tribes have always been regarded as wards of the nation, and not subject to state laws even when their reservations are located within the borders of a State. The power of congress to govern Indian tribes by legislation, and thereby abrogate or supersede Indian treaties has been upheld by the United States supreme court. The principle that a State may act in the absence of affirmative legislation on the part of congress is not applicable to the government of tribal Indians. So if Indian tribes are wards of the federal government and owe no allegiance to any State, and if the power over the Indian tribes rests with the federal government because it exists nowhere else, and if from necessity there can be no divided authority, then the jurisdiction of Congress must be exclusive, and the state laws cannot extend to tribal Indians. Consequently the conservation laws of the State of New York do not extend over the Indians residing in tribal relations upon reservations within the borders of that State, and an Indian so living in tribal conditions is not liable for a violation of that law in fishing within the bounds of his reservation with a net without the required license.

*Marriage—Exception of Persons of Particular Religious Faith.* Fensterwald vs. Burk. (Maryland. June 23, 1916. 98 A. 358.) An exception in a statutory prohibition against marriage between uncle and niece in favor of persons of the Jewish faith does not contravene the constitutional provision providing that one's religious opinions shall not enlarge his civil capacity. Where such a marriage between uncle and niece is valid under the laws of Rhode Island, the State where the marriage was performed, it is valid in Maryland, not being incestuous "according to the generally accepted opinion of Christendom."

*Milk—Regulation of Sale.* State vs. Stokes. (Connecticut. July 27, 1916. 98 A. 294.) A regulation of the board of commissioners of public health of a city prohibiting the sale of milk in stores unless contained in sealed bottles, does not conflict with a state act fixing a milk standard, and penalizing the placing of certain substances in milk containers and defining impure milk. Nor is such a regulation an

invalid classification where it applies to the sale of milk in stores, bakeries and butcher shops, but does not apply to dairymen and farmers.

*Monopolies.* United States vs. United Shoe Machinery Co. (United States. June 6, 1916. 234 Fed. 127.) The Clayton anti-trust act, making it unlawful for any person engaged in commerce, in the course of such commerce, to lease or sell goods, machinery, etc., on any condition that the lessee or purchaser shall not use or deal in goods or machinery of a competitor of the lessor or seller, where the effect may be substantially to lessen competition or tend to create a monopoly, as applied to leases made in the conduct of interstate business, is within the constitutional power of congress.

*Monopolies—Regulation of Sale of Hog Cholera Serum.* Hall vs. State. (Nebraska. June 3, 1916. 158 N. W. 362.) A limitation of the sale of hog cholera serum to persons holding United States government veterinary licenses and a permit from the live stock sanitary board, is an attempted restriction on the power of the citizen to buy and sell hog cholera serum and is unconstitutional for the reason that any person has the right to adopt and follow any lawful industrial pursuit which is not injurious to the community. Such an act gives a monopoly to the serum-manufacturing plant, because it is the plant that is licensed under the federal act. A further provision that no one shall give or accept a rebate or commission on serum sold or offered for sale, is an additional bar preventing the farmer from purchasing serum with which to treat his own hogs, and preventing the veterinary surgeon from purchasing serum with which to treat hogs belonging to his employers.

*Mothers' and Old Age Pensions—Constitutionality of Act.* State Board of Control vs. Buckstegge. (Arizona. July 1, 1916. 158 P. 837.) The title of an act entitled "An act providing for an old age and mothers' pension and making appropriation therefor," does not express the subject of the act which provides not only for the establishment of old age and mothers' pensions, but also covers the abolition of the statutory system of county hospitals and poor farms, leaving the different counties without any means or provisions for the care of their indigent sick and poor, not entitled to pensions. Such an act is also invalid for the reason that it requires the support by pension of cer-

tain mothers with dependent children regardless of their financial condition.

*Parole-Consent of Party.* Ex parte Taggert. (Oklahoma. June 24, 1916. 158 P. 288.) Before the court can make the conditions of a parole binding upon a party convicted, that party must consent to the terms and conditions thereof. He is a party at interest and must be consulted, he alone has the right to accept the parole with the conditions imposed, or to reject it as he sees fit. And to bind him by the terms of the parole his consent must affirmatively appear.

*Statutes—Construction.* Perrault vs. Robinson. (Idaho. June 29, 1916. 158 P. 1074.) Statutes enacted at the same session of the legislature should receive a construction, if possible, which will give effect to each. They are within the reason of the rule governing the construction of statutes *in pari materia.* They are to be construed together, and should be so construed if possble, as to harmonize and give force and effect to each. If, however, they are necessarily inconsistent, the statute which deals with the common subject matter in a more minute and particular way will prevail over that of a more general nature.

*Statutes—Construction of Revisions.* Wipperman Mercantile Co. vs. Jacobson. (Minnesota. June 23, 1916. 158 N. W. 606.) In construing the revision of the laws of a State reference may be had to the report of the commission which drafted it, as the legislature undoubtedly gave weight to such report in enacting it. Reference may also be had to the history of the law and the purpose sought to be accomplished thereby. The presumption is that no change in the existing law was intended by the revision; and to give it the effect of changing the former law, the intention to make such change must clearly appear from the language of the statute when taken in connection with the history of the act and the purpose sought to be accomplished by it.

*Statutes—Direct Legislation—Preamble.* State ex rel. Berry vs. Superior Court. (Washington. July 5, 1916. 159 P. 92.) The preamble to a statute is an introductory clause which states the motive, design, reason or intent thereof. A preamble is not an essential part of a statute, has no legislative force, and is of importance only as a guide to an understanding of the statute with reference to the legisla-

tive intent in case of doubt or ambiguity. Under a constitutional provision for direct legislation there is no constitutional right given to propose a preamble to a proposed initiated law, and the courts will enjoin the publication at the expense of the State of a proposed preamble containing purely argumentative matter in support of an initiated act. While neither the judicial nor the executive branches of the government can interfere to prevent a delegated member of a legislative body from introducing a bill no matter how novel or foolish, the initiator of a bill, under the system of direct legislation, is not a legislator with whose acts in proposing the bill the courts cannot interfere. The initiator of direct legislation must proceed in accordance with the positive law prescribing the method of such legislation, and the courts will interfere by injunction in proper cases to prevent submission in disregard of such laws.

*Statutes—Right of Courts to Determine Constitutionality.* Terrell vs. Middleton. (Texas. June 14, 1916. 187 S. W. 367.) Whatever doubts may have existed at one time as to the authority of courts to decide upon the constitutionality of statutes, that matter has been definitely settled in favor of the affirmative, and while it may be a subject of regret that the court of last resort has seemed desirous at times of usurping the full powers of government, and laying itself open to the charge of shaping the policies and principles of our government, the fact has been settled beyond recall that courts, federal and state, have the authority ultimately to destroy or enforce laws passed by the legislative branch of the government.

*Taxation—Railroad Terminals—Collection for Localities.* State ex rel. City of Superior vs. Donald. (Wisconsin. June 13, 1916. 158 N. W. 317.) An act provided that the state tax commission make a valuation of the docks, piers, wharves and grain elevators used in transferring freight or passengers between railroad cars and vessels, separate from the valuation of the property of a railroad company as a whole, and that the taxes derived from such separately valued property be distributed to the towns, villages, and cities in which such property is located. An objection that the act appropriates money of the State for local purposes cannot be sustained since the funds are not state funds but funds belonging to the locality which have been collected by the State as a matter of convenience. Nor does the statute violate the rule that taxation be uniform, as the law does not

change in the least the taxpayer's burden, since he pays the same amount whether his whole tax remains in the state treasury or whether part of it goes to the treasury of a locality. Nor does the statute accomplish a discrimination between the taxing units of the State, since the marine terminal imposes upon the locality in which it is located responsibilities, duties and financial obligations not shared by municipalities possessing only ordinary railroad property.

*Trials—Right to Public Trial.* Roberts vs. State. (Nebraska. July 1, 1916. 158 N. W. 930.) The law requires that trials shall be public, but this requirement is satisfied by admitting those who can conveniently be accommodated in the court room, where the law requires such trial to be held, without interrupting the ca'm and orderly course of justice. It is not proper to adjourn a criminal trial for a capital offense from the regular court room to the stage of a public theater, without sufficient cause for so doing.

*Workmen's Compensation Act—Constitutionality.* Greene vs. Caldwell. (Kentucky. June 6, 1916. 186 S. W. 648.) A workmen's compensation act is not unconstitutional as depriving of property without due process of law because taking from a non-accepting employer certain defenses, since the employer has no vested rights in such defenses, and the legislature could take them all away without giving any election at all. Nor is it invalid as establishing a court; for the workmen's compensation board, established by it, is not a court but a board of arbitrators from whose decision an appeal lies to a court. Nor is it unconstitutional because not allowing a jury trial, since the parties accepting agree to trial without jury.

## BOOK REVIEWS

*The Postal Power of Congress, a Study in Constitutional Expansion.* By LINDSAY ROGERS, Ph.D., LL.D., adjunct professor of political science in the University of Virginia. (Baltimore: Johns Hopkins University Studies in Historical and Political Science, Series xxxiv, No. 2. 1916.)

Like the other powers of congress, the postal power has to be studied, in its historical aspect at least, in three relations: first, that determined by the words in which it is granted; second, in relation to the supposed reserved rights of the States; third, in relation to the fundamental rights of individuals, the rights which in this instance are safeguarded by the first and fifth amendments.

One of the best illustrations that we have of the nonsense of which the states-rights metaphysic was capable is furnished by the fact that there came a time when the spokesmen of this school set up the contention that the power to "establish" postroads did not include the power to *construct* them, but only the power "to *select* from those already made those on which there shall be a post," an argument which, as Mr. Rogers suggests, if logically adhered to, would have compelled the national government to select its inferior courts from tribunals already in existence. A more moderate theory accorded the word "establish" its normal meaning, but held that before the national government could construct a road within a State, it must obtain the consent thereof, an idea which seems to have been referred to the "necessary and proper" clause, since, it was argued, "however *necessary* such improvements might be, it might be questioned how far an interference with the State jurisdiction over its soil, against its will, might be proper!" Yet, notwithstanding the wide vogue of such views, particularly after the triumph of the backwoods democracy under Jackson, the proper view of national power in this field was stated as early as 1838 by the supreme tribunal of a southern State. In *Dickey vs. Maysville, etc. Co.* (7 Dana 113), the Kentucky court of appeals defined the word establish as signifying "to found, prepare, make, institute, confirm;" and pronounced the national power over the post to be "exclusive," "plenary," and "supreme," so that "no State can constitutionally do,

or authorize to be done, any act which may frustrate, counteract, or impair the proper and effectual exercise of it by national authority."

The personal rights regarded as claimable against the postal power were, before the Civil War, confined to those safeguarded by the first amendment, but these were construed very broadly indeed. Then when the question arose in 1836 of excluding incendiary matter from the mails, Webster, Clay, and Calhoun all three contended vehemently that any direct effort by the national government to this end would constitute an "abridgement of freedom of speech and the press," though Calhoun thought congress might adopt State legislation dealing with the matter. It remained for Buchanan of Pennsylvania to state what would today be regarded as the more nearly correct view: "From the prohibition to make any law 'abridging the freedom of speech or of the press,' it could never be inferred that we must provide by law for the circulation through the post-office of everything which the press might publish."

What, then, is the limit to congress' power nowadays in excluding published matter from the mails? It is indicative of the general trend of constitutional construction throughout the past generation that Mr. Rogers discusses this question primarily in relation to the fifth amendment rather than the first, and with the parallel of congress' power over commerce in mind. The conclusion he arrives at, he phrases thus: "Any legislation excluding from the mails must apply to the *things* mailed, not to the *persons* using the mails. This is a distinction which is evident in the decisions upholding the interstate commerce legislation, and which underlies the argument that congress may exclude commodities manufactured in whole or in part by children. The law would operate directly on these commodities . . . . because of the objectional conditions of employment. And by a parity of reasoning congress could exclude from the mails matter relating to gambling transactions which might be forbidden under the police power of the States . . . . But it is an entirely different proposition absolutely to deny the use of the mails because certain persons have refused to comply with conditions, beyond the power of congress directly to impose, which it thinks may result in regulating objectionable practices, although these may be entirely disassociated from the bulk of the matter which has been excluded," (p. 172).

If the distinction thus offered is a really feasible one, it would seem to condemn the recently enacted child labor law, which excludes from interstate commerce, not the products of child labor as such, but the

products of *establishments* employing child labor. Indeed, the alacrity shown by the sponsers of this legislation may have been due to the belief that it would ultimately succumb to the constitutional test. But if this was the case, these gentlemen may find themselves hoist by their own petard. At any rate, I personally believe the recent legislation to be quite defensible constitutionally, however it may fare by Mr. Rogers' test. For granting that congress may exclude the products of child labor from interstate commerce, it may certainly adopt reasonable measures to make its prohibition effective and enforceable; and if a State may, by way of making its game laws effective, forbid its inhabitants from having in their possession game which was lawfully imported from abroad (*Silz vs. Hersterberg*, 211 U. S.), I see no reason why the product of an establishment employing child labor may not be excluded from commerce among the States. On the other hand, it is apparent, I think, that an act of congress forbidding divorced persons the use of the mails or of the channels of interstate commerce would be void; and the test by which it would be void is this: the use of the facility thus inhibited has nothing to do with the consummation of the evil which is sought to be combatted. But wherever a facility subject to national control is being put to a bad use, it may be withdrawn; and in judging of what *is* "bad," congress must be allowed the same range of judgment as the State enjoys in the exercise of its police power.

Professor Rogers has produced an interesting, well written and thoroughly competent piece of work, which is well up to the high standard set by the series of studies in which it appears.

EDWARD S. CORWIN.

*History and Procedure of the House of Representatives.* By DEALVA STANWOOD ALEXANDER. (Boston and New York: Houghton Mifflin Company. 1916. Pp. xv, 435).

Professor Redlich in his *Procedure of the House of Commons* demonstrated the importance of legislative procedure for the student of politics who would know the actual operations of governmental machinery. He did this by showing how the rules of procedure of the house of commons reflected the economic, social, and political conditions of England. The book under review, written by one who was for fourteen years a member of congress, does for the house of representatives what Professor Redlich did for the commons, although the two treatises

will hardly bear comparison when one considers the scholarly grasp and keen analysis of English political conditions Professor Redlich exhibits in his monumental work. Nevertheless, Mr Alexander presents for the first time a compact and authoritative history of the house of representatives and a general survey of congressional procedure. The author discusses the following topics: apportionment and qualification of members, organization of the house, the speaker, rules and committees on rules, committees and their work, debates and debaters, contested election cases, the President and the house. The author's remarks on these subjects are evidently the result of considerable and discriminating investigation of government documents relieved by a wealth of personal reminiscence and anecdote.

In describing the effect of the political conditions of the United States on the rules of procedure of the house of representatives, Mr. Alexander shows how, before 1861, it was held that a quorum consisted of a majority of all possible members, that the rebellion had caused a large number of constituencies to refuse to elect, and that the house then considered a quorum to consist of a majority of those chosen then alive (p. 56). He explains how obstruction received a decisive check by the operation of the previous question during our strained relations with England and France during the Napoleonic wars. John W. Eppes, chairman of the committee on foreign affairs, reported a bill to relieve the country from the embarrassment consequent upon the non-intercourse edict against England and Napoleon's Berlin decrees. Randolph, opposing the bill, adopted obstructive methods by means of continuous debate. Since only seven days of the session remained it became imperative to stop discussion and to pass the bill which had received the President's support. The previous question was demanded, it was ordered, and the house, reversing the speaker's ruling, voted that the previous question ended debate. These incidents, taken at random, demonstrate that Mr. Alexander is appreciative of external influences on the procedure of the house of representatives.

Of most importance and interest, probably, are the chapters dealing with the speaker, the rules and committees on rules, the order of business, and the President and the house. Mr. Alexander's comparison of the speaker of the house of commons with the speaker of the house of representatives deserves notice. The speaker of the house of commons "declares and interprets the law in a strictly judicial spirit, and his rulings are final. He renounces party, and merges the

lesser office of member into the greater one of speaker" (p. 43). On the other hand, the speaker of our national house, until 1910, "combined imperfectly the duties of a British speaker . . . . and the legislative functions of a British prime minister, who represents a majority of the congress and endeavors to control legislation by all the adventitious aids known to party machinery" (p. 44). Of course, in 1910, the American speaker lost much of his power because the appointment of committees was taken from him and a special calendar for unanimous consent was established.

In the chapter on rules and committees on rules, Mr. Alexander discusses at length parliamentary obstruction. The purpose of this device "is to defeat a measure, or to postpone it until certain specified demands are complied with." In this chapter also he discusses the expedients used to overcome dilatory tactics. The chapter on the order of business is concerned chiefly with the efforts of representatives to provide rules at once adequate and fair to deal with the country's increasing business. The aim always has been to prevent the house from becoming merely a voting machine with a minimum amount of debate by members. The ideal has, however, been hard to attain, for in the Sixty-second Congress, for example, 26,000 bills were introduced (f. n. p. 217). The inevitable has happened. The house more and more tends simply to register opinions, because discussion on all of these bills would have left the business to be attended to far in arrears.

The final chapter—the President and the house—discusses the procedure employed when electing the chief executive, when the President presents a message, at the time of resolutions of inquiry, and in case of a president's veto or threatened veto. Mr. Alexander considers President Wilson's practice of appearing before congress to read his messages as likely to confine the applause to one side of the chamber, "giving the ceremony something of a partisan character, which occasions subtle embarrassment" (p. 356).

Several defects in Mr. Alexander's work may now be noted. His failure to discuss the influence of English precedent on the rules of the house of representatives is an important, if not serious omission. Professor Redlich observes that "American parliamentary government is obviously a genuine shoot from the old English stem, even after making fullest allowance for the independent characteristic development of the last hundred years in the United States." It may be regretted that Mr. Alexander did not realize this fact. Although the

author devotes many pages to obstruction, it is curious that he failed to mention "filibustering" the American form of this peculiar procedural device. It differs from the ordinary dilatory tactics in that it is more systematic, and it usually takes the form of long speeches. Further, the correctness of Mr. Alexander's definition of obstruction, already referred to, may be questioned, for he fails to distinguish between wilful and unconscious obstruction. In the first instance, it is intentional delay of legislation by parliamentary procedure. In the second instance, it is unintentional delay of legislation resulting from political conditions outside the house. These distinctions are of importance for the student of legislative procedure. Finally, certain mechanical defects in the book are noticeable. The index is inadequate. The appendix, which contains lists of the presidents and vice-presidents, speakers, chairmen of committees, and political divisions of the house of representatives from 1789 to 1915, would be of more interest and value if explanatory notes accompanied them.

Nevertheless, the book is a valuable contribution to a highly important but too little known subject. The style is interesting, although rhetorical at times, and not always clear and definite. The work well repays the careful study alike of students of general political science and of legislative procedure.

GEDDES W. RUTHERFORD.

*Our Chief Magistrate and His Powers.* By WILLIAM HOWARD TAFT. (New York: Columbia University Press. 1916. Pp. 165.)

This book contains six chapters bearing the following titles: "Distribution of Governmental Powers;" "The Veto Power;" "The Minor Powers of the President;" "The Power of Appointment;" "The Duty of the President to take care that the laws are executed;" "The Powers and Duties of the President as Commander in Chief;" "The Foreign Power;" "The Pardoning Power;" "The Limitations on the President's Power." These chapters were originally prepared in the form of six lectures delivered by Ex-President Taft at Columbia University in the year 1915–1916. The author also delivered three lectures on the same subject at the University of Virginia the preceding year, which have been published by Charles Scribner's Sons under the title: *'The Presidency: Its Powers, Duties, Responsibilities and Limitations.''* The volume before us is a more extended treatment of the same general subject.

The distinguished author has given us an interesting account of the presidency from the point of view of one who has wielded its great powers, and felt the weight of its grave duties and responsibilities. He has maintained a refreshing good humor throughout the book, although some of the incidents referred to must have tried even his proverbial good nature in their relation. One would expect Mr. Taft to take advantage of the opportunity offered by a course of popular lectures to emphasize the really important things he has stood for while in office. He has done this with characteristic frankness and entire freedom from the taint of objectionable partisanship. He has made an admirable presentation of the defects in the methods of managing our national finances and the need of a correct budgetary system under executive control and responsibility. His exposure of the patronage game and how it is played, notwithstanding the civil service laws and rules, is courageous and in fine spirit.

A few passages will illustrate the position taken by Mr. Taft on a number of questions discussed, and the style of treatment adopted in this book. On page 12 he shows his characteristic distrust of the modern reformer in summing up the advantages of the "congressional" system as opposed to the "cabinet" system in the following words:

"The value of the legislation seems not to be in the good of its operation, but in its vote-getting quality, and its use as molasses for the catching of political flies. Therefore, a system in which we may have an enforced rest from legislation for two years is not bad. It affords an opportunity for proper digestion of recent legislation and for the detection of its defects. . . . . Real progress in government must be by slow stages. Radical and revolutionary changes, arbitrarily put into operation, are not likely to be permanent or to accomplish the good that is prophesied of them. My observation of new reform legislation of a meritorious character is that congress and its members must be educated up to its value by those who have studied it and become convinced of its wisdom. . . . . The world is not going to be saved by legislation and is really benefitted by an occasional two years of respite from the panacea and magic that many modern schools of politics seem to think are to be found in the words 'Be it enacted.'"

On page 34 the author calls attention to a practice of the President not commonly understood. He says the executive office of the President is not a recording office. "The vast amount of correspondence that goes through it, signed either by the President or his secretaries,

does not become the property or a record of the government unless it goes on to the official files of the department to which it may be addressed. The retiring President takes with him all the correspondence, original and copies, which he carried on during his administration. Thus there is lost to public record some of the most interesting documents of governmental origin bearing on the history of an administration. It is a little like what Mr. Charles Francis Adams told me of the diplomatic records of the British foreign office. It has long been the custom for the important ambassadors of Great Britain to carry on a personal correspondence with the secretary of state for foreign affairs, which is not put upon the files of the department, but which gives a much more accurate and detailed account of the diplomatic relations of Great Britain than the official files."

On page 59, speaking of the patronage system, he says: "Machine politics and the spoils system are as much an enemy of a proper and efficient government system of civil service as the boll weevil is of the cotton crop, or the various forms of insects and blight are of the farmer and the horticulturist in their pursuits. The strength of these pernicious influences has not been entirely destroyed by the present civil service law. . . . . The law will not enforce itself. It has accomplished one purpose in enabling those who voted for it in the legislature to claim credit for it on the stump; but such a law cannot be drawn which will be practical and at the same time will not permit evasion of its purpose by a partisan in the executive chair who devotes his time to it. We often, therefore, find the law more honored in the breach than in the observance. . . . . It is clearly understood by the senators and congressmen as to how this patronage is to be divided between them in each State, and the President attempting to break up the custom has heretofore found himself unable to do so."

He also vigorously condemns the practice of permitting the judges of the federal courts to appoint their clerks. On page 68 he says: "Judges are men of high character, great ability and wide learning generally, but when they are given executive or quasi-political functions, that is, when they exercise patronage, they have proven to be quite like other men. Clerks appointed in the federal district courts become part of the family of the judge. Their appointments are practically for life. They feel secure, they are close to the judge. Their associations are intimate. They naturally seek to increase the earnings of their offices, especially when their salaries are more or less dependent on the amount of their official earnings, and they are prone

to overcharges. The favor they enjoy with the judge, as part of his family, has, I am sorry to say, permitted such abuses. The reluctance that some judges have to call their clerks to strict account in the management of their offices is too well known to the head of the department of justice and to his inspectors whose duty it is to examine their accounts. When in office, I recommended that the President have the power of removal of such clerks for cause, upon the report of the attorney general, but no such action was taken, although there were a number of cases presented justifying such a change in the law. With nearly one hundred clerks of court and with a large number of deputies spread all over the United States, the influence that can be used with members of congress in a matter like this, not acutely political, only those who have had occasion to meet it can fully understand."

WM. A. SCHAPER.

*Woodrow Wilson. The Man and His Work.* By HENRY JONES FORD. (New York: D. Appleton and Company. 1916. Pp. 332.)

Prof. Henry Jones Ford was a colleague and close friend of Woodrow Wilson in the department of history, politics, and economics at Princeton University. He was appointed banking commissioner of New Jersey when Mr. Wilson was governor of that State, and went to the Philippines on a secret mission for him after he became President. Thus the subject is fortunate in having for his biographer a sympathetic friend rather than a political opponent. The volume, however, is not a campaign book. It is prepared in a most attractive style and will appeal to any reader with sufficient education to appreciate the political setting.

A biography may be a mere chronology of events, but this work contains only enough detail of Mr. Wilson's movements and outward acts to serve as a background for his thoughts and the principles upon which he acts. The author uses copious quotations from the writings of Mr. Wilson to express the opinions held by him at the different periods of his life. For instance, Mr. Wilson has always been deeply interested in our so-called budget system. When he was a senior at Princeton (1879) he published an article in the *International Review* on "Cabinet Government in the United States," which showed a remarkably clear insight into the actual workings of our financial methods. His thesis for the Ph.D. degree at Johns Hopkins (1886), entitled "Congressional Government," elaborated his earlier ideas set

forth in the article on cabinet government. This work became so popular that up to 1912 twenty-four impressions had been printed. In reply to a letter from Senator Tillman, dated January 21, 1913, Mr. Wilson wrote: "Ever since I was a youngster I have been deeply interested in our methods of financial legislation. Ever since then I have insisted upon the absolute necessity of a carefully considered and wisely planned budget, and one of the objects I shall have most in mind when I get to Washington will be conferences with my legislative colleagues there with a view of bringing some budget system into existence. . . . ." (p. 298).

In addition to the numerous quotations from the books, articles, and speeches of Mr. Wilson, Professor Ford gives us the result of his own political observations by pointing out the constitutional significance of Mr. Wilson's policies and acts. For instance, he analyses the situation created by the overthrow of Cannonism, which shifted the center of legislative power from the speaker to the caucus, in an especially clear manner, and shows that this shift of power created the need of a cabinet in close political harmony with the majority caucus. He says: "Under the old system the ability of the President to obtain actual consideration of the measures recommended by him depended upon the favor of the speaker; under the present system it depends upon the favor of the caucus, and its good will must be a controlling purpose in the formation of the cabinet. Hence the selections made should not be taken as the expression of the President's own preference, but as his recognition of the conditions under which the administration had to be conducted" (p. 170).

The following thirteen chapter titles indicate the various phases of the life considered: "Birth and Education;" "His Career as an Educator;" "His Books and Essays;" "Entrance into Public Life;" "Governor of New Jersey;" "President of the United States;" "Tariff Legislation and Trust Control;" "Currency Reform;" "The Situation in the Philippines;" "The Mexican Question;" "The War and its Issues;" "Personal Traits;" and "A Mid-Career Appreciation."

FRANK ABBOTT MAGRUDER.

*The Federal Executive.* By JOHN PHILIP HILL. (Boston and New York: Houghton Mifflin Company. 1916. Pp. viii, 269.)

This work undertakes to describe the history and the present organization and functions of the President's cabinet and the several execu-

tive departments of the United States national government. It gives a serviceable account of these matters in a brief compass and makes more available some reference to recent developments than is to be found in other books. But it does not fulfill the publisher's announcement that it is a "complete history" of the subject.

Some of the omissions are notable, even in a volume of this size. There is no mention of Miss Hinsdale's *History of the President's Cabinet*, nor of Gaillard Hunt's *Department of State*. There is one reference to national banks, but no account of the system of government control, nor of the comptroller of the currency or the federal reserve board. Something is said about most of the presidents and a number of department heads; but many of the most significant do not appear, e.g., President McKinley; Secretaries of State Marcy, Seward and Hay; Secretaries of the Treasury Gallatin and Chase; Secretaries of War Calhoun and Root; and Secretary of Agriculture Wilson. There is nothing about President Jackson's influence in demonstrating the presidential power of removal.

The several departments are discussed in four chapters, under captions taken from the preamble to the Constitution of the United States. The appropriateness of the grouping is not always obvious, as in uniting the departments of war, navy and justice as agencies to "insure domestic tranquility,"—omitting the phrases of the preamble relating to "justice" and the "common defence," or in discussing the post office department as the main illustration of "the blessings of liberty."

In connection with the departments of war and the navy there is some discussion of military preparedness, with comparative tables of the armed forces of other countries. No similar comparisons are made in connection with the other departments; and this discussion does not fit in with the general plan of the book.

A final chapter on probable developments forecasts no important changes in the position of the President or the cabinet, but suggests the future establishment of new departments of Education, Transportation and Interstate Trade. If anything comes of proposed plans for an executive budget—about which nothing is said—the position of the President and the cabinet may be altered in important respects. New departments may be advisable; but the recent tendency has been towards increasing the number of quasi-judicial commissions; and this tendency also fails to receive attention.

JOHN A. FAIRLIE.

*Third Party Movements Since the Civil War, with Special Reference to Iowa:* A Study in Social Politics. By FRED E. HAYNES. (Iowa City: The State Historical Society of Iowa. 1916. Pp. 564.)

This somewhat detailed study of minor political parties is confined to those third parties which "grew out of the economic and social conditions arising from the settlement of the West," and, accordingly, gives no place to the Prohibition and Socialist parties. The five parts of the book bear the following titles: "The Liberal Republican Movement;" "The Farmers' Movement;" "The Greenback Movement;" "The Populist Movement;" "The Progressive Movement;" and each part, in addition to a satisfactory general treatment of the origin, platform principles, personnel, and influence of the party, has from one to five chapters devoted to conditions in Iowa. Those who are interested in political theory, especially in the influence of economic ideas in politics, will find much that is instructive and suggestive in the account of the economic setting of third parties, and of the relation to these movements of the economic ideas of Henry George, Edward Bellamy, "Coin" Harvey, Henry D. Lloyd, Richard T. Ely, and William G. Sumner.

The conclusion, however, that "these long neglected and often apparently extreme groups have slowly but surely made American politics social" would seem to require more qualification or explanation than it receives. In view of the fact that other platforms are summarized and freely quoted, it is surprising to find omitted all but a reference to the important Populist platform of 1892; and the interesting discussion of the early "progressivism" of men like Hazen S. Pingree, "Golden Rule" Jones, Tom L. Johnson, William S. U'Ren, Joseph W. Folk, and Albert B. Cummins seems scarcely to warrant the statement that "Michigan, Ohio, Oregon, Missouri, and Iowa were the most conspicuous of the States where the foundations were laid locally for the progressive movement."

In general, however, the treatment is careful, comprehensive, and well proportioned, and is made vivid by full accounts of the personal element, by fresh points of view, and by suggestive interpretations.

A. C. MILLSPAUGH.

*Criminality and Economic Conditions.* By WILLIAM ADRIAN BONGER. Translated by Henry P. Horton. With an editorial preface by Edward Lindsey, and with an introduction by Frank H. Norcross. In the Modern Criminal Science Series, No 8. (Boston: Little, Brown, and Company, 1916. Pp. xxxi, 706.)

The committee of the American Institute of Criminal Law and Criminology has rendered a great service to students of present-day problems—legal, economic, and sociological—by selecting for the Criminal Science Series this work of the Dutch publicist, Dr. Bonger. The excellent translation is based on the French text of the Amsterdam edition of 1905. In the etiology of crime it is safe to say that economic conditions hold the first place; and in the rapidly expanding literature relating to the economic factors of criminality Dr. Bonger's elaborate investigation is without a peer. Thoroughness of research, clearness of analysis, and keenness of interpretation reveal the hand of the trained expert. A great mass of statistical material has been explored. The marginal notes and the "revised" bibliography of 27 pages disclose a wide and close acquaintance with the European literature of the subject. However, the author does not show adequate knowledge of American writings and statistical collections. On ancillary questions, such as prostitution and the family institutions, some of the best work is unnoticed; while on the main subject, to cite two omissions, no use apparently is made of the reports of the Massachusetts Bureau of Labor Statistics, nor of Koren's important *Economic Aspects of the Liquor Problem*, an investigation made for the Committee of Fifty (1899).

The work comprises two parts, the first offering a "critical examination of the literature dealing with the relation between criminality and economic conditions." So far as practicable in this division the various authors considered are allowed to state their views in their own words. The second part, filling about two-thirds of the volume, contains Dr. Bonger's own investigation.

The first part in eight chapters provides an historic background for the scientific discussion of the present-day phenomena of criminality. It constitutes a unique source-book for the theories and the literature relating to the causes of crime. The opening chapter contains extracts from the writings of thirteen "Precursors—authors who treated the subject before the birth of modern criminal science," beginning dramati-

cally with the prophetic *Utopia* of Thomas Moore, who has the cardinal told that instead of "appointing great and horrible punishments for thieves," it would be wiser to provide "some means whereby they might get their living." According to these writers the social environment is the fruitful source of crime. When our irrational social system, the basic cause of evil, "shall be removed," says Robert Owen, "then will the evil cease, and not before." In the ensuing chapters of this part due notice is given to: the "Statisticians," seventeen in number, not belonging to any special school of criminologists; the "Italian School"—headed by Lombroso and Garofolo—which "insists especially upon the individual factors in crime, and ascribes only a secondary place to economic factors;" the "French School." which "considers the rôle played by environment as very important," and includes such writers as Tarde, Corre, and especially Manouvrier, who has set forth the theory of environment "in the clearest manner;" the group of "Bio-Socialists," whose doctrine forms the synthesis of the Italian and French schools; the "Spiritualists," like Joly, Proal, and de Baets, who, though influenced more or less by modern criminal science, have the idea in common, that the "continually growing irreligion is a cause of the increase in criminality," and that the "irreligious are predisposed to crime;" and finally the so-called "Third School and the Socialists," to which belong writers like Turati, Bevel, Lux, and Colajanni who regard the influence of economic conditions as "decisive" in the causation of crime.

Aside from its careful analysis of the literature, Part I of this book is of special scientific interest. It attests the efficiency of the statistical method. Dr. Bonger's searching criticism, notably of Lombroso and some other members of the Italian school, reveals the perils due to the crude handling of statistical data; while his own luminous interpretation may stand as a model of scientific induction.

The second part of this work is a social-economic treatise of high value. The first of the two books into which it is divided explains the "present economic system and its consequences." The opening chapter shows the inevitableness of criminality under the existing system of production. Human labor, like other exchangeable things, "has become a commodity corresponding exactly to definition: first it has no use-value for the possessor if he has not the means of production, and, on the other hand, has such a value for the person possessing these means; second, the possessor of labor has the free disposition of it." The most important consequence of the new system of produc-

tion is the "introduction of the labor of women and children, since tending of machines generally does not require great muscular strength. The advantages which accrue to the capitalist from the employment of women and children are obvious. Since the price of the workman's labor is determined by the time necessary for the production of the necessities of life not only for himself, but also for his family, as soon as the whole family are compelled to sell their labor, the price of that labor will simply equal that of the labor of the workman alone."

In a convincing discussion the author shows how the present "social condition of the different classes is chiefly the result of capitalistic production." The capitalistic bourgeois' thirst for gold is not quenched when he has "arrived at a point where he can live a luxurious life and gratify all his caprices." He strives ever to amass more wealth. As a consequence, "in general he is little developed in other directions, uses all his time in attaining the end he wishes for, has a mind only superficially cultivated, and if he is interested in art he regards it simply as a pastime which he procures for money."

On the other hand, the impoverished class is not made of inferior clay because it has failed in the economic struggle. Dr. Bonger exposes the crass fallacy of "social Darwinism," and accepts the doctrine of "potential" talent or genius as expounded in the great work of Odin, though he seems not to be familiar with the brilliant chapters on this subject in Ward's *Applied Sociology*. The lower proletariat is "not composed, then, as has sometimes been claimed, of beings inferior by nature, of persons who are fit for nothing. In the great majority of cases social conditions and not their lack of aptitude are the exclusive and direct causes of their position."

The economic conditions which tend to produce criminality are accented in the relations of the sexes in marriage, the family, and in prostitution. Here the author is at his best. His elaborate discussion is based on ample statistical data. The monogamic family has sprung up in consequence of the rise of private property. It is not the last word in social development. Bad family-education and poverty are the chief causes of prostitution. With Bebel, Dr. Bonger holds that the present restricted marriage relation is responsible for much evil. Thus prostitution is "partly the inevitable complement of the existing legal monogamy, and partly the result of bad conditions under which many young girls grow up, the consequence of the physical and mental misery in which the women of the proletariat live, and the consequence also of the "inferior position of women in our present society." Bad

housing conditions breed prostitution. In general prostitutes are made and not born. At birth the daughters of the people are not of earth inferior to that of the higher social classes; yet at least 95 per cent of prostitutes "have sprung from the lowest strata of society." The existing social inequality is "alone responsible for their unequal distribution." A woman may even sell herself for conscience's sake: to fulfil her duty as daughter or mother; to save from want her aged or infirm parent.

The last 300 pages of this able treatise, constituting the second book of Part II, are given to a masterly discussion of "Criminality." The egoistic tendencies resulting from the present economic conditions are examined in detail. These tendencies are traced in the present economic system; in the proportion in which the different classes are guilty of crime; in marriage; the criminality of women; the family; prostitution; alcoholism; militarism; the penalty; and in imitation.

In the same spirit, with use of a similar wealth of statistical materials, the actual results of these tendencies are investigated in the concluding chapters, entitled respectively: economic crimes, sexual crimes, crimes from vengeance and other motives, political crimes, and pathological crimes.

No attempt can here be made to analyze these chapters. Dr. Bonger has exposed the fallacy of the individual origin of crime and proved society's responsibility for it. Lombroso's theory of the born criminal is shown to be untenable. "It is society that prepares the crime, says the true adage of Quetelet. For all those who have reached this conclusion, and are not insensible to the sufferings of humanity, this statement is sad, but contains a ground of hope. It is sad, because society punishes severely those who commit the crime which she has herself prepared. It contains a ground of hope, since it promises to humanity the possibility of some day delivering itself from one of its most terrible scourges."

The author believes that his "ideas about the etiology of crime will not be shared by a great many readers of the American edition." He is surely mistaken so far as the educated public is concerned. As to the rest, he has provided the needed lesson.

GEORGE ELLIOTT HOWARD.

*The Single Tax Movement in the United States.* By ARTHUR NICHOLS YOUNG. (Princeton: Princeton University Press. 1916. Pp. x, 340.)

The Single Tax Movement in the United States has found an impartial chronicler in Dr. Arthur Nichols Young. After a brief view of the precursors of Henry George, and a description of the peculiar economic environment in California during his formative years, the narrative begins with an account of the activities which led to the writing of *Progress and Poverty*, and rapidly unfolds after the republication of that remarkable book in New York. The friendly reviews of the new work soon gave place to heated criticism as popular enthusiasm brought the agitation within the realm of practical politics. From his arrival in New York in 1880, until his dramatic death on the eve of the mayoralty election in 1897, Henry George lived at high tension: writing, traveling, lecturing, spending his whole power in defending and popularizing his disturbing doctrine. The last half of the volume is given up to a clear and detailed summary of the political activities of single taxers in the States where their efforts have been concentrated, and an appraisal of the general scope and significance of the movement. A bibliography and index complete a useful study.

Confining the investigation to the United States has led unavoidably to a somewhat arbitrary picture of what is essentially a world movement. A second volume would be needed to trace the influence of Henry George upon the economic development of the British Empire, the reception of his ideas in Europe, and present tendencies in some of the Spanish-American republics.

In reviewing the course of the single tax movement, the historian notes a tendency to shift the emphasis from abstract reasoning to concrete political issues, although it was admittedly the human appeal which gave vitality to *Progress and Poverty*, with its passionate assertion that "private property in land is a bold, bare, enormous wrong, like that of chattel slavery." To socialize the rent of land and abolish all taxes (save that on land values) involves so revolutionary a process that his followers have been prone to take Henry George's advice and seek the line of least resistance. Their efforts have been directed to obtaining separate assessments of land and improvements, to securing home rule in taxation, direct legislation, and even to advocacy of the income tax as a means of reaching a part of the unearned increment.

Thus it is maintained that, while single taxers have been an impor-

tant factor in tax reform, they "have not been able to convince many that private ownership of land is ethically on a different basis from other property, or that to expropriate owners of existing land values is more just than to expropriate owners of other property values." Their work still lies ahead. Unaided today by the popular appeal of such striking personalities as Father McGlynn, Tom L. Johnson or Joseph Fels, they must win a hostile public to a belief in the equal rights of all to the use of the earth, or see the single tax movement relegated to the scrap heap of discarded Utopias.

FRANK W. GARRISON.

*The Socialism of To-Day.* Edited by WILLIAM ENGLISH WALLING, J. G. PHELPS STOKES, and others. (New York: H. Holt and Company. 1916. Pp. xvi, 642.)

This volume is offered as "a source book of the present position and recent development of the socialist and labor parties in all countries, consisting mainly of original documents." It is edited by a committee of the Intercollegiate Socialist Society and is introduced by an historical sketch of the growth of socialism (chapter I), stressing chiefly the platforms of its international congresses. Then follow in sections II-V, twenty-four chapters tracing the recent progress of the socialist movement in the various nations of the earth, emphasizing in brief, sketchy chapters official resolutions, platforms and important discussions, and also presenting tabulations of the results of recent elections, showing comparative gains and losses. From the demands of the socialist platforms throughout the civilized world one may get in brief form a most excellent study of the various aspects of radicalism in widely differing types of civilization, so that these chapters are most helpful and suggestive.

Most readers, however, will be best pleased with Part II, which devotes twenty chapters to a brief presentation and discussion of the attitude of socialism towards social problems. A brief statement of the problem introduces each chapter, and then follow official declarations and opinions, with indications as to the probable socialist policy towards each of the problems discussed, such problems, for example, as the general strike, unemployment, immigration and woman suffrage. In these discussions naturally most attention is given to English-speaking countries and to France and Germany.

An Appendix discusses "Preparedness" from the standpoint of Amer-

ican socialist opinion. Socialism as affected by the present war is ignored in this volume, since a companion volume (*The Socialists and the War*) presents that aspect of socialistic development.

The book as a whole is well printed, carefully prepared, and is well nigh indispensable to those desirous of a "bird's eye view" of socialism in its present stage of transition. J. Q. DEALEY.

*The Problem of the Commonwealth.* By L. CURTIS. (Toronto: The Macmillan Company. 1916. Pp. xii, 247.)

Not in a long time has a more stimulating and critically-constructive work on the British Empire appeared than the subject of this review. At the same time, while thought-provoking, it is marked by sanity and logical dispassionateness. To a considerable extent it is the fruit of the collective effort of groups of earnest thinkers in various portions of the British Empire to focus attention upon imperial problems with a view of introducing reforms where needed in the present organization of the empire. But while reflecting in part the views and opinions no less than the criticisms of the various "Round Table Groups," the volume is nevertheless the individual contribution of Mr. Lionel Curtis, who holds himself alone responsible for the opinions expressed. It is presented as a preliminary report to be followed shortly by a much larger one under the title of *The Commonwealth of Nations.* Although the views here expressed contain little that is novel, as indeed Mr. Curtis admits, they "have never been adopted as their creed by any recognized party, either in the Dominions or in the British Isles." And yet the issues raised transcend parties and party creeds and call as never before for a conscious and deliberate decision. The underlying issue is revealed in the contention "that dominion electorates must, in the not distant future, assume control of foreign affairs, yet cannot do so without deciding irrevocably whether they are to keep or to renounce their status as citizens of the British commonwealth." The problem was even more baldly stated by Mr. Andrew Fisher on his first arrival in London, as high commissioner of the Australian commonwealth. "If I had stayed in Scotland," declared Mr. Fisher, "I should have been able to heckle my member on questions of Imperial policy, and to vote for or against him on that ground. I went to Australia. I have been prime minister. But all the time I have had no say whatever about Imperial policy—no say whatever. Now that can't go on. There must be some change." In a like vein, Sir

Robert Borden, the Canadian prime minister, declared in December, 1912, that "it has been declared in the past, and even during recent years, that responsibility for foreign policy would not be shared by Great Britain with the dominions. In my humble opinion adherence to such a position would have but one and that a most disastrous result." Prior to the outbreak of the European War however such dissatisfaction was sporadic and largely limited to isolated groups of thinkers. But among the political problems raised by the war not the least momentous is this very one of the political reorganization of the British Empire. After the restoration of peace the empire system must be revised in accordance with the principles for which it stands. Naturally the dominions will expect thereafter to participate in the determination of the foreign policy in support of which they have undergone such heavy sacrifices.

In the present struggle, the scattered communities of the empire are radically altering their relations to each other. Before the outbreak of the present war the common defense of the empire had nowhere been recognized as a first charge on the public resources, except in the British Isles. And therefore it was quite natural that the responsibility for the issues of peace and war had nowhere within the empire been assumed, except by the people of the United Kingdom. Clearly, the first of these conditions can scarcely be revived with the return of peace, in any case it cannot be maintained. It will be evident that the liberties which have been preserved cannot be secured for the future, unless the burden involved is recognized as a first charge on the resources of *all* the free communities of the commonwealth, *in peace as well as in war*. But at the same time it will be recognized that the financial relations of the older and younger communities cannot be revised without also revising their political relations, owing to the generally accepted principle that "a democracy can never be responsible for anything until it is responsible for paying the cost of it."

While entirely in accord with the view that the burning problem of the present is to win the war, bending all energies to that end, Mr. Curtis commends to the thought of statesmen and thinkers in general the problem of the future of the empire. No more opportune time for the careful consideration of the issue can be conceived than after the restoration of peace when the peoples of Britain and the dominions alike will be thinking imperially. And with the advent of a victorious peace, which happily appears now to be assured, the opportunity is one of added promise. Now, indeed, is the accepted time, for the tide

in the affairs of the empire is flowing strongly and must be taken at the flood. We are reminded by Sir Charles Lucas that an occasion has arisen "such as may never present itself again."

Implicit in the very suggestion that the political organization of the empire is in need of revision lies the fact that weaknesses and dangers lurk in the present system. In the popular view there is lacking an appreciation of the fact that while self-government in the dominions is sufficient for the purpose of realizing nationhood, it is still incomplete. To be sure the dominions have been conceded every power of self-government which they have *finally insisted upon having*. Thus they manage their own domestic affairs, frame their tariffs, control their immigration, create forces by land and sea, and do anything they please, short of attempting to determine for themselves the ultimate issues of peace and war. That the legal standing of the self-governing dominions is anomalous is obvious. They have been spoken of as "partner nations" whose ministers stand on a footing of equality with those of Great Britain. By one British statesman they have been described "as sister states, equals of the United Kingdom in everything except population and wealth," and by another it has been asserted that "we each of us are, and we each of us intend to remain, master in our own household. This is, here at home and throughout the dominions, the life-blood of our polity." And yet the issues of peace and war, the moment they are raised, must be left to a government in which the dominion electorates have no voice. They "are habitually settled," we are reminded by Mr. Curtis, "by the government responsible to the people of the British Isles, and without reference to those responsible to the people of the dominions."

Thus in August, 1914, the dominions were unexpectedly involved in a war by events of which not only they but their governments knew nothing. In this crisis it was impossible for the dominions, like the United States, to declare their neutrality without, like the American republic, first declaring their independence. Happily they were swept by filial instinct into the defense of the imperilled Mother Country. And yet none but the fatuous optimist would conclude from the remarkable sacrifices enthusiastically and voluntarily accepted by the Dominions that their political status within the empire is satisfactory and that it can indefinitely continue. The overseas peoples of the empire have earned the right to a voice in the foreign policy of the empire as a whole in determining questions which involve peace and war. They wish to share the responsibility.

Notwithstanding the growing feeling that the situation calls for the convening of a conference, at the close of the war, on a larger and more representative scale than the imperial conference, a wide difference of opinion presents itself over the question as to what lines of empire organization should be followed by that body. Some would build the future of the empire on a system of alliances, rejecting all thought of organic unity. Some maintain with equal conviction that organic unity alone will avert eventual disruption and that if it is not carried through on the present high wave of imperial sentiment there can never be a united empire. There are others, looking forward to ultimate organic unity, who maintain that it can come only as the result of a gradual development. In the opinion of this group "any federation or union of English people must grow. Any cut-and-dried scheme would be fatal, contrary to English history, and contrary to English instincts."

In his advocacy of a commonwealth of Greater Britain, Mr. Curtis forcibly champions the plan of organic unity. Quite properly rejecting the suggestion of admitting Canadian and other dominion representatives into an imperial parliament, which should remain in control over the domestic affairs of the British Isles, he advocates the establishment of a genuinely imperial parliament. Under this plan the conduct of foreign affairs for the whole British commonwealth and the conduct of domestic affairs for the British Isles would no longer be entrusted to one and the same authority. "These two great departments of business," says Mr. Curtis, "the one affecting the whole commonwealth, the other a small part of it, are not merely distinguishable in theory, but can also be separated in practice, and no proposal will touch the fringe of the problem which does not assign each of them to cabinets and parliaments as distinct from each other as are those at Ottawa from those at Quebec." The United Kingdom accordingly would of necessity establish a national government of its own, the counterpart of the national governments of Canada, Australia, and the other dominions. He adds that "the imperial government must have no more to do with exclusively British affairs than it now has with the national affairs of the several dominions."

To this new body would be assigned the exclusive control of foreign policy and of all the administrative departments necessary to the carrying out of a foreign policy. The foreign office, the war office, the admiralty, the India office, and the crown colony branch of the colonial office, together with a ministry of imperial finance, would be

represented in the cabinet which would be the executive organ of this imperial parliament. The parliament would be elected "from all those dominions whose people have decided to assume control of foreign affairs without foregoing their status as British subjects." This new legislative body would retain all the powers now exercised through the enumerated offices together with the power of voting the funds which in its opinion would be necessary for the conduct of foreign affairs and defense. It could be established and its authority accepted by the dominions without the alteration of "a single word of their existing constitutions." By this change their inhabitants would obtian a control over foreign policy while at the same time assuming a new liability for their share of its cost.

For the United Kingdom, however, this would not be true. The proposed plan would involve a radical change in the manner in which its domestic affairs are regulated. The peoples of the British Isles would have to accept local parliaments. These and other proposed changes would have to be incorporated in a formal act of the existing imperial parliament, which, if passed, would practically become a written constitution for the commonwealth as a whole.

The commonwealth, thus proposed, would constitute a "super-national democracy"—a commonwealth not only of free individuals but of free nations. In thus presenting the issues inherent in the problem of evolving an organization which would be more than an alliance but less than an *imperium*, Mr. Curtis has rendered a notable service to political scientists the world over.

THEODORE H. BOGGS.

*Nationality in Modern History.* By J. HOLLAND ROSE. (New York: The Macmillan Company. 1916. Pp. xi, 202.)

The author of the *Development of European Nations* has done us a distinct service in bringing his wide and accurate knowledge of recent history to bear upon one of the most vital and distinctive features of modern European civilization. How nation is distinguished from state, and how racial, linguistic and religious bonds work both with and against the bond of government is a problem not easily grasped by the uninitiated, and yet its solution lies at the very basis of an understanding of the present European situation. Mr. Rose tells us that it is his aim to study "the varied manifestations of nationality among the chief European peoples" and the ten lectures which comprise the

volume constitute a remarkably complete review of modern history from that point of approach.

In the first lecture Mr. Rose treats of the rise of the national idea in Europe as opposed to the political unity of the old Roman world, and mentions as causes of this new idea the barbarian invasions whereby Europe was split up into tribal areas, as well as the discords arising from the struggles between pope and emperor. Civil strife and the oppression of the people by absolute governments did much to delay the development of the national idea, and it is only in comparatively recent times that its advance has proceeded by leaps and bounds. In France we find a new spirit in 1791, when the loss of a monarch only served to create a consciousness of unity among the people, which soon ran to excess and became the victim of Bonapartism. In Germany the seeds were sown by her philosophers and poets, and the harvest reaped when resistance to Napoleon called for a united nation. In Spain the natural aloofness and pride of the Spanish people became a national force when in conflict with the power of Napoleon. In Italy the growth of nationality is described by the author as "a struggle against the policy of division and subjugation imposed in 1815." As in Germany, so in Russia, the Napoleonic invasion marked a national awakening, which became panslavic in character when the liberation of the Balkan states from the yoke of Turkey became first a program and then an accomplished fact. In reference to the fears of many Europeans in regard to panslavism Mr. Rose designates the movement as "having been hitherto a political tower of Babel."

In the seventh lecture Mr. Rose traces the gradual but steady growth of the present German nationalism (the aggressive form of nationality) from the ideas of Frederick the Great as the guiding spirit of the Prussian state, through Kant's gospel of duty and Fichte's Spartan aims to the theories of Hegel, who glorified the state as an "absolute and all-pervading entity," and then on to the *Realpolitik* of Rochau and the inevitable result, namely, Treitschke's teachings, the present Emperor's *Weltpolitik*, and the decadence of nationality into militarism and chauvinism. This decline of nationality from a great constructive movement into a policy of aggression is discussed by the author with respect to the present European conflict, and in the closing lecture he discusses earlier movements for the attainment of the ideals of internationalism, and gives reasons for hoping that there may be a revival of these ideals.

On the whole Mr. Rose's volume is a very scholarly bird's-eye view

of modern European history with the emphasis on nationality, its various origins and developments. There is, moreover, quite a bit of political philosophy thrown in, and some interesting prophecies are made of two possible types of peace and their attendant results. To students of history the book will prove a helpful review of familiar facts and their bearing on that topic of special interest at present, nationality and war. To those less well acquainted with Europe's past, *Nationality in Modern History* presents an opportunity to acquire a knowledge of facts essential to an intelligent consideration of present conditions and future developments,—facts given in a most interesting style and, as the author expresses it, in "as objective and impartial a treatment as present conditions admit."

MARY LEE HICKMAN.

*The Law of Contraband of War.* By H. REASON PYKE. (Oxford: The Clarendon Press. 1915. Pp. xl, 314.)

To those who from a sense of scholarly duty have attempted to thread their way through the British orders in council, the American protests, the British replies and further American protests, the present volume will come as a welcome light in the darkness. Mr. Pyke sets out to trace the origin and development of the fundamental principles of the law of contraband based upon the practice of the chief naval powers in different periods, and from the outset he disclaims any purpose of settling the moral questions involved in the alleged inconsistency of trade, by neutral citizens, in munitions of war with the principle of non-intervention followed by the neutral government. The laws of neutrality are as a whole not a consistent body of rules, being the result of a compromise between the conflicting interests of belligerents and neutrals; hence in place of abstract consistency the author suggests that new developments of the law be based upon deduction from the usages which have gradually grown up as a result of the special conditions of particular wars.

The historical treatment of the origin and development of the principles of the modern law of contraband presented in Chapter V will be of considerable value in furnishing the background for an understanding of present controversies. Step by step, belligerents have enlarged the sphere of interference with neutral trade to meet the circumstances of modern warfare, subordinating neutral interests to belligerent needs, until we reach the point where, in consequence of conscript armies,

the old distinction between absolute and conditional contraband is practically destroyed, and belligerents have even attempted to make neutrals bear the burden of a policy of reprisals against the enemy, and have asked to be excused from the duties of humanity because of the inconvenience of carrying them out.

Chapter VI shows the position of the neutral government with respect to trade in contraband, and clears up the distinction between what the individual citizen may do and the state may not do. In Chapter XII the doctrine of continuous voyage is viewed from every angle, and the conclusion is reached that the conditions of modern warfare demand that the destination of the goods be taken as the test and not merely the destination of the ship, as in the earlier British cases. Chapter XIV deals with contraband in the war of 1914–1915 and is a defense of the British reprisals against Germany. An appendix contains the Declaration of London accompanied by the report of the drafting committee, together with other documents bearing upon the subject. An excellent bibliography, classified according to subject matter, gives additional value to a work which has much intrinsic merit.

C. G. FENWICK.

*Anglo-American Isthmian Diplomacy*, 1815–1915. By MARY WILHELMINE WILLIAMS. (Washington: American Historical Association. 1916. Pp. xii, 356.)

This book shows great industry and very conscientious presentation of material covering, in considerable detail, the entire history of diplomatic negotiations between the United States and Great Britain in relation to Central America. Large use has been made of the unpublished diplomatic records of both countries; and to these and to printed sources, reference has been made with a minute care which is almost meticulous, but which must be helpful to anyone making an equally detailed study in the future. Without present means of checking the author's statements of fact, it can only be said that critical attention has plainly been given to the perplexingly contradictory versions of all Central American affairs.

The author's judgment is balanced, and her presentation of the subject appears just. The book is far, however, from being the last word on the subject. Useful as the volume is, it is lacking in the power to seize the truly vital, to bring out with distinctness the larger aspects of the topic. On the basis of this intensive study, more significant

conclusions remain to be drawn. It would be unwarranted, however, to dwell too much on that which is lacking. The book offers a rather remarkable doctoral dissertation, and it must have given pleasure to the committee of the American Historial Association to award to it the Justin Winsor prize in 1914. ROBERT T. CRANE.

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**Address of President Woodrow Wilson** accepting the Lincoln Homestead at Hodgenville, Kentucky, presented to the government by the Lincoln Farm Association. Senate doc. 546. 1916. 5 p. 8°.

**Antitrust Laws with Amendments,** The Federal. List of cases instituted by the United States and citations of cases decided thereunder or relating thereto. July 1, 1916. 1916. 105 p. 8°. *Department of Justice.*

**Beef Industries,** Investigation of. Hearings . . . Committee on the Judiciary, House of Representatives . . . on H. Res. 148. . . . 1916. 545 p. 8°.

**Business Activity in the United States** and in leading foreign countries. Letter from the chief of the Bureau of Foreign and Domestic Commerce . . . to the chairman of the Senate Committee on Finance . . . Senate doc. 477. 1916. 78 p. 8°. *Department of Commerce, Bureau of Foreign and Domestic Commerce.*

**Civil Service,** Retirement of employees in the. Hearing before the Committee on Civil Service and Retrenchment. United States Senate . . . on S. 3079 . . . and S. 5673 . . . 1916. 183 p. 8°.

**Criminal and Other Laws of the United States** with reference to neutrality and foreign relations, Recommendations by the Attorney General for legislation amending the. 1916. 32 p. 8°. *Department of Justice.*

**Economic Conference of the Allied Governments.** [Inclosure-Translation] [Circular] 3311, *State Department.*

No. 3311 is a translation of the agreement only.

**Employment Managers' Conference,** Proceedings of. 1916. 82 p. 8°. House doc. 1155. Bulletin 196. *Department of Labor, Bureau of Labor Statistics.*

Held under the auspices of the National Society for the Promotion of Industrial Education and the Minneapolis Civic and Commerce Association, January 19 and 20, 1916.

**European War.** No. 3 . . . Diplomatic correspondence with belligerent governments relating to neutral rights and duties. 1916. 387 p. fol. *Department of State.*

**Farm Loan Act,** The federal. Approved July 17, 1916. . . . with marginal notes and index. Prepared by W. W. Flannagan . . . Senate document 500. 1916. 50 p. 4°. *Congress, Joint Committee on Rural Credits.*

**French Spoliation Claims, The,** by George A. King. Reprinted from the American Journal of International Law, 1912—with additions. Senate doc. 451. 1916. 52 p. 8°.

**Parcel Post Convention,** between the United States of America and China. 1916. 7 p. 8° *Post Office Department.*

**Railroads, Hours of Service on.** Address of the President of the United States delivered at a joint session of the two houses of congress, August 29, 1916. House document 1340. 1916. 8 p. 8°.

**Railroad Labor Arbitrations.** Report of the U. S. Board of Mediation and Conciliation on the effects of arbitration proceedings upon rates of pay and working conditions of railroad employees. Senate doc. 483. 1916. 608 p. 8°

**Revenue,** To increase the, and for other purposes . . . Report [to accompany H. R. 16763]. House Report 922. 1916. 10 p. 8°. *House Committee on Ways and Means.*

**Speech of Notification** by Senator Ollie M. James and Speech of Acceptance by President Woodrow Wilson. Senate doc. 543. 1916. 18 p. 8°.

**Speech of Notification** by Senator Warren G. Harding and Speech of Acceptance by Mr. Charles E. Hughes. House document 1315. 1916. 19 p. 8°.

**Steamship Lines engaged in transporting freight.** Letter from the Chairman of the Interstate Commerce Commission . . . A report relative to corporate interests of railroads in vessels or steamship lines engaged in the coastwise trade of the United States. Senate doc. 492. 1916. 87 p. 8°. *Interstate Commerce Commission.*

**Tariff Systems** of South American Countries. By Frank R. Rutter . . . Tariff series no. 34. 1916. 308 p. 8°. *Department of Commerce. Bureau of Foreign and Domestic Commerce.*

**Telephone Operating,** Investigation of the wages and conditions of. Report. By Nellie B. Curry, field investigator. 1915. 58 p. 8°. *Commission on Industrial Relations.*

**Trade Agreements Abroad.** Articles relating to the resolution (S. 220) "Requesting the President to ascertain certain information relating to a recent commercial conference held in Paris, France, by certain European nations" . . Senate doc. 491. 1916. 68 p. 8°. *Senate.*

**Trade and Tariffs** in Brazil, Uruguay, Argentina, Chile, Bolivia, and Peru, Report on. June 30, 1916. 1916. 246 p. 8°. *Federal Trade Commission.*

**Trade of the United States** with the World 1914-15. Imports and exports of merchandise into and from the United States, by countries and principal articles, during the years ending June 30, 1914 and 1915. 1916. 247 p. 8°. Miscellaneous series, no. 38. *Department of Commerce Bureau of Foreign and Domestic Commerce.*

**Transportation Facilities.** Summary of the reports submitted in response to a request of the Secretary of the Treasury on July 19, 1915, by several delegations to the First Pan American Conference. Senate doc. 497. 1916. 11 p. 8°.

**Transportation of Troops to Mexican Border.** Letter from the Secretary of War transmitting, in response to House resolution 292, information regarding the transportation of troops to the Mexican Border. House doc. 1311. 1916. 16 p. 8°. *War Department.*

**Trust Laws and Unfair Competition.** Joseph E. Davis, Commissioner of Corpora-

tions. March 15, 1915. 1916. 832 p. 8°. *Department of Commerce, Bureau of Corporations.*

**Unemployment in the United States.** House doc. 1154. 1916. 115 p. 8°. Bulletin 195. *Department of Commerce, Bureau of Labor Statistics.*

## ALABAMA

**Alabama's Public-School System:** a comparative study. 1916. 32 p. 8°. Bulletin No. 55. *Department of Education.*

## CALIFORNIA

**California:** the story of our State, by Percy Friars Valentine. 67 p. 12. *Board of Education.*

**General Election Laws,** Supplement of 1916 . . . 1916. 62 p. 8°. *Legislative Counsel Bureau.*

**Housing Survey,** A plan for a . . . 1916. 16 p. 8°. *Commission of Immigration and Housing.*

**Taxation** in California, Foreword on . . . 1916. 16 p. 8°. *Tax Commission.*

## COLORADO

**Unemployment and Relief,** Committee on. Report of Secretary. 1916. 47 p. 8°.

Committee appointed by executive order of March 23, 1915.

## CONNECTICUT

**Constitution** of the State of Connecticut as amended and in force January 1, 1916. [1916]. 27 p. 16°. *Secretary of State.*

## FLORIDA

**The Fourth Census** of the State of Florida taken in the year 1915 . . [1915]. 78 p. 8°. *Department of Agriculture.*

## IDAHO

**Constitution** of the State of Idaho as adopted by Constitutional Convention held at Boise City, . . . Aug. 6, 1889. Ratified . . . Nov. 5, 1889. Effective July 3, 1890. And all amendments thereto . . . 1915. 92 p. 8°. *Secretary of State.*

## ILLINOIS

**Cost of State Government.** Compiled by Finley F. Bell. [1916]. 46 l. charts. fol. *Legislative Reference Bureau.*

## INDIANA

**A Century of Progress.** A study of the development of public charities and correction, 1790-1915. By Amos W. Butler, secretary of the Board of State Charities. [1916]. [10], 154. [2] p. 8°. *Board of State Charities.*

**The Budget,** by William T. Donaldson. Bulletin No. 6. January, 1916. 30 p. 8°. *Bureau of Legislative Information.*

**City Government,** Forms of, by Frank G. Bates. Bulletin No. 5. January, 1916. 27 p. 8°. *Bureau of Legislative Information.*

**State Institutions,** Control and Supervision of. Bulletin No. 7. March, 1916. 40 p. 8°. *Bureau of Legislative Information.*

## IOWA

**British Rule in India,** Some aspects of, by Sudhindra Bose. 1916. 149 p. 8°. Bulletin 121. N. S. *University of Iowa.*

**State Federation of Labor,** The Iowa, by Lorin Stuckey. 1916. 147 p. 8°. Bulletin 120 N. S. *University of Iowa.*

**Third Party Movements since the Civil War,** with special reference to Iowa. A study in social politics, by Fred E. Haynes. 1916. 564 p. 8°. *Historical Society.*

## KANSAS

**Constitution** of the State of Kansas . . . 1916. 31-67 p. 8°. *Secretary of State.*

## MARYLAND

**Industrial Accident Commission.** First annual report . . . 1914-15. [1915.] 77, [2] p. 8°.

## MASSACHUSETTS

**Budget Procedure** submitted to the governor, council and general court, Report on . . . 1916. 32 p. 8°. *Commission on Economy and Efficiency.*

**Unemployment:** a new method of gathering statistics. Report of sub-committee of the Relief agencies' committee of the Massachusetts State Committee on Unemployment. 1916. 13 p. 8°. *Board of Labor and Industries.*

## MISSOURI

**Children's Code Commission.** Preliminary report of the committees . . . 1916. [20] p. mimeographed 4°.

## NEBRASKA

**The Torrens Land Transfer Act** of Nebraska, by Thorne A. Browne. *Nebraska Legislative Reference Bureau.* Bulletin No. 10.

## NEW YORK

**The Constitution** of the State of New York. Adopted Nov. 6, 1894, as amended and in force April 6, 1915. 166 p. 4°. *Constitutional Convention Commission.*

**Enumeration of the Inhabitants,** 1915, Report of the Secretary of State of. 1916. 1379 p. 8°. (assembly no. 17.)

## OHIO

**Budget Code** and explanations . . . 1916. 42 p. 8°. *Budget Commission.*

## SOUTH DAKOTA

**Initiative and Referendum in South Dakota.** 1916. [7]. p. 8°. Legislative Reference Bulletin No. 3. *Department of History.*

## TEXAS

**Judicial Reform in Texas.** 1916. 39 p. 8°. Bulletin. 1916: No. 12. *University of Texas.*

**Officers, Boards and Commissions of Texas,** by Frank M. Stewart. *Texas State Library.* Legislative Reference Bulletin No. 3.

## WASHINGTON

**Comparative Statistics of Food stuffs and Fuel** for three years as shown in a budget of the annual cost of living of a family of five persons based on prices prevailing in month of April of each year . . . [1916]. [3]. p. 8°. *Bureau of Labor.*

**Primary Election, Registration** and absent voters laws of Washington, . . . 1916. 55 p. 16°. *Secretary of State.*

## WISCONSIN

**The President of the United States,** by Gaillard Hunt. [1915.] 75-98 p. 8°. Separate [reprint] No. 165. *Historical Society.*

From the proceedings of the society for 1915.

## ARGENTINE

**Argentine Foreign Trade** 1913-1915, Route followed by the. Buenos Aires. 1916. 18 p. 8°. *Department of Agriculture, Direction General of Commerce and Industry.*

## AUSTRALIA

**Death and Invalidity in the Commonwealth,** Committee concerning causes of. Preliminary Report. 1916. 6 p. fol. *Department of Trade and Customs.*

## CANADA

**European War,** Second Supplement. Proclamations, orders in Council and documents relating to the. 1916. 527-1050 p. Appendices 351-537 p. 8°. *Department of the Secretary of State.*

## GREAT BRITAIN

**British Trade After the War** (2). Summaries of the evidence taken by a subcommittee of the advisory committee to the Board of Trade on Commercial Intelligence in the course of their enquiry with respect to measures for securing the position, after the war, of certain branches of British industry. 1916. 38 p. fol. [Cd. 8275.] price 4d. [In continuation of parliamentary paper Cd. 8181.]

**Economic Conference of the Allies** held at Paris on June 14, 15, 16 and 17, 1916, Recommendations of the. 1916. 8 p. fol. [Cd. 8271.] price one penny. *Board of Trade.*

**European War.** Papers relating to German atrocities and breaches of the rules of war, in Africa. 1916. 86 p. fol. [Cd. 8306.] price 9½ d. *Foreign Office.*

**Examination of Parcels and Letter Mails,** Note from the United States Government regarding the. 1916. 6 p. fol. Miscellaneous: No. 20 (1916). [Cd. 8261] price 1d. *Foreign Office.*

**Rebellion in Ireland,** Royal Commission on the. Report of the Commission. [Cd. 8279.] price 2d. 1916. 14 p. fol.

**State Purchase of the Licensed Liquor Trade,** Report of the advisory committee on proposals for the. 1916. 6 p. fol. [Cd. 8283.] Price 1d. *Home Office.*

## HAITI

**Convention** entre la République d'Haiti et les États-Unis d'Amérique. **Port-au-Prince.** 1916. 8 p. 4°. *Département des Relations Exterieures.*

## MEXICO

**Nota Envida por el Gobierno Constitucionalista** al de La Casa Blanca. Con motivo de las incursiones de tropas Americanas en territorio Mexicano. Mexico. 1916. 20 p. 8°. *Secretaria de Relaciones Exteriores.*

## INTERNATIONAL

**Cour permanente d'arbitrage,** Rapport du conseil administratif de la, sur les travaux . . . , sur le fonctionnement des services administratifs et sur les défenses pendant l'année 1915. La Haye [1916]. 57 p. fol. (*Bureau international de la Cour permanente d'arbitrage*).

**International High Commission.** First edition of the committee reports and resolutions. Adopted at the first general meeting, held in Buenos Aires, in April, 1916. Published by order of the central executive council. Washington. 1916. 45 p. 16°.

# INDEX TO RECENT LITERATURE—BOOKS AND PERIODICALS[1]

## CONSTITUTIONAL LAW AND ADMINISTRATION

### *Books*

*Barone, Domenico.* I ricorsi elettorali e la recente giurisprudenza della V sezione del consiglio di stato. Milano: Società editrice libraria. Pp. 61.

*Barone, Domenico.* La legittimazione per decreto reale nel sistema della legge e nella pratica amministrativa. Milano: Società editrice libraria. Pp. 52.

*Baudin, Pierre.* Le budget et la déficit. 10e ed. Paris: Alcan. Pp. vi, 252.

*Chu, Chin.* The tariff problem in China. New York: Columbia University Press. Pp. 192.

*Clarke, Samuel B.* What may be done to enable the courts to allay the present discontent with the administration of justice. New York. Pp. 41.

*Connor, Jeremiah, F.* Employers' liability, workmen's compensation and liability insurance. New York: Spectator Company. Pp. 9, 262.

*Curtis, Lionel.* The problem of the commonwealth. New York: The Macmillan Company. Pp. 247.

*Dazet, Georges.* Les orphelins de la guerre. Leur situation juridique. Paris: M. Giard et E. Brière.

*Douchez, A.* Guerre de 1914-1915. Recueil des lois, décrets, etc. Alger: Adolphe Jourdan. Pp. 120.

*Elliott, Edward.* American government and majority rule. Princeton: Princeton University Press.

*Errera, Paul.* Traité de droit public belge. Paris: M. Giard et E. Brière.

Gouvernement général de l'Afrique équatoriale française. Paris: Emile Larose. Pp. 307.

Gouvernement général de l'Afrique occidentale française. Paris: Emile Larose. Pp. 703.

*Guthrie, William D.* Magna Carta and other addresses. New York: Columbia University Press.

*Iorio, Carmine.* Elementi di diritto amministrativo e contabilità di stato. Perugia: Unione tipografica cooperativa. Pp. 22.

*Jèze, Gaston.* Les finances de guerre de l'Angleterre. Paris: M. Giard et E. Brière. Pp. 252.

Justice Militaire. Limoges: Henri Charles-Lavauzelle. Pp. 167.

*Leger, Louis.* La liquidation de l'Autriche-Hongrie. Paris: Alcan.

*Lecouturier, Henri.* L'impôt général sur le revenu. Paris: V Hugonis. Pp. iv, 285.

[1] Data not available for publications issued in Austria-Hungary and Germany.

*Macauley, Ward.* Reclaiming the ballot. New York: Duffield and Company. Pp. 109.

*McClure, W.* State constitution making. Nashville: Marshall and Bruce Company.

*Mercier, Auguste..* L'impôt sur le revenu. Paris: Georges Roustan.

*Myrick, Herb.* The federal farm loan system. New York: O. Judd Company. Pp. 238.

*Odgers, Walter Blake.* Nationality and naturalisation. Jordan. Pp. 92.

*Orth, Samuel P.* The imperial impulse: background studies of Belgium, England, France, Germany, and Russia. New York: The Century Company.

*Singh, St. Nihal.* The King's Indian allies. London: Sampson Low, Marston and Company.

*Venezian, Emilio.* La legislazione sulla proprietà industriaie e la tutela dell' industria nazionale. Torino: Unione tipografico editrice. Pp. 7.

*Vogt, William.* La Suisse allemande au début de la guerre de 1914. Poitiers: G. Roy. Pp. 167.

*Wilson, Woodrow.* The President of the United States. Harper and Brothers. Pp. 71.

*Articles*

**Austria-Hungary.** The end of a ramshackle empire. *Suum Cuique.* Contemp. Rev. September, 1916.

**Belgium.** The future of Belgium. *"Y."* Fort. Rev. September, 1916.

**British Empire.** Imperial reconstruction. *Sidney Low.* Edinb. Rev. July, 1916.

——— Rhodes and Parnell on Imperial federation. *J. G. Swift-MacNeill.* Fort. Rev. July, 1916.

——— The reconstruction of the British Empire. *Sir Clement Kinloch-Cooke.* Fort. Rev. August, 1916.

——— Reconstruction of the British Empire. *R. L. Schuyler.* Pol. Sci. Quart. September, 1916.

**China.** La republique chinoise. *Scié Ton Fa.* La Paix par Le Droit. Juin, 1916.

——— Administration of Chinese government railways. *Ching-Chun Wang.* Chinese Soc. and Pol. Sci. Rev. April, 1916.

——— The Chinese district magistrate. *L. K. Tao.* Chinese Soc. and Pol. Sci. Rev. April, 1916.

——— The organization of the Waichiao Pu [Foreign Office] *Yü Chüan Chang.* Chinese Soc. and Pol. Sci. Rev. April, 1916.

——— The reform of land tax in China. *Ung Yuen Hsü.* Chinese Soc. and Pol. Sci. Rev. April, 1916.

**German Empire.** The dissolution of the German Empire. *Yves Guyot.* Nine. Cent. September, 1916.

**Holland.** Legislation in Holland during the year 1915. A. L. P. Am. Bar. Ass'n Jour. July, 1916.

**House of Commons.** The House of Commons and the war. *Rt. Hon. Charles Hobhouse.* Contemp. Rev. August, 1916.

**Military Courts.** Les tribunaux militaires en temps de guerre. *Joseph Barthèlemy.* Rev. du Droit et de la Sci. Pol., xxxiii[e], No. 2. 1916.

**Suffrage.** The new parliamentary register and votes for women. *Millicent Garrett Fawcett.* Contemp. Rev. July, 1916.

——— The woman voter and the spoils system in Chicago. *Edith Abbott.* Nat'l. Mun. Rev. July, 1916.

**Taxation.** Exemption of real estate from taxation. *Martin Saxe.* The American City. August, 1916.

——— Tax exemption of American Church property. *Carl Zollmann.* Mich. Law Rev. June, 1916.

——— Deux ans de guerre sans relèvements d'impôts. *Fernand Faure.* Rev. Pol. et Parl. Août, 1916.

## INTERNATIONAL RELATIONS

### *Books*

*Albin, Pierre.* La guerre allemande: d'Agadir à Sarajevo (1911-1914) Paris: Alcan. Pp. 256.

*Alglave.* Problèmes de guerre. Le droit de la guerre. Nancy-Paris: Berger-Levrault. Pp. 91.

*Andler, Ch.* Collection de documents sur le Pangermanisme. Paris: Conard. 4 vols.

*Aragon, Henry.* Les guerres dans l'antiquité et la guerre moderne. Perpignan: J. Comet. Pp. 256.

Aus deutschen Kriegsgefangenenlagern. Francfort-sur-Mein: Rütten. Pp. 172.

*Baie, Eugene.* Le droit des nationalités. Paris: Alcan.

*Balcanicus.* La Bulgarie; ses ambitions; sa trahison. Evreux: Paul Hérissey. Pp. x, 296.

*Balfour, Arthur J.* The freedom of the seas. London: T. Fisher Unwin.

*Bard, Harry Erwin.* South America. Study Suggestions. Boston: D. C. Heath and Company. Pp. 68.

*Belin, J. P.* Les relations économiques entre la France et la Grande-Bretagne. Paris: Belin Frères.

*Belloc, H.* The elements of the Great War. Second phase. New York: Hearst Intern. Lib. Co.

*Bertrand, Adrien.* La conquète de l'Autriche-Hongrie, par l'Allemagne. Nancy-Paris: Berger-Levrault. Pp. 59.

*Bland, J. O. P. trans.* Germany's violations of the laws of war, 1914-15. London: Heinemann. Pp. 381.

*Blondel, Georges.* La guerre et le problème de la population. Paris: Lethielleux.

*de Card, E. Rouard.* La Turquie et le protectorat français en Tunisie, 1881-1913. Paris: J. Gamber. Pp. vi, 92.

*di Cesarò, G. A.* Germania imperiale e il suo programma in Italia. Firenza: libr. della *Voce.* Pp. 148.

*Cestre, Ch.* L'Angleterre et la guerre. Paris: Didier. Pp. 352.

*Cheng, F. T.* Rules of private international law, determining capacity to contract. London: Stevens and Sons. Pp. 134.

*Chuquet, A.* Prouesses allemandes. Paris: Fontemoing. Pp. 285.

*de Choppin, Joey.* Les Boches en Belgique. Montpellier: Manufacture de la Charité. Pp. 56.

*Crouvezier, G.* La guerre aérienne. Nancy-Paris: Berger-Levrault. Pp. 68.

*Curtis, L., ed.* Commonwealth of nations. New York: The Macmillan Company. Pp. 741.

*Davis, George B.* The elements of international law. 4th ed. New York: Harper and Brothers. Pp. 668.

*Déjardin, Jacques.* L'effet de la guerre sur les rapports entre locataires et propriétaires. Paris. Rousseau et Cie. Pp. 290.

*Delaire, A.* Au lendemain de la victoire. Le nouvel equilibre européen. Paris: Nouvelle Librairie nationale. Pp. xvi, 380.

*Destree, Jules.* Belgium and the principle of nationality. London: Council for the Study of International Relations. Pp. 45.

*Destrées Jules.* L'effort britannique. Contribution de l'Angleterre à la guerre européene. Paris: G. Van Œst. Pp. xii, 277.

*Dillon, E. J.* England and Germany. New York: Brentano's.

*Dymond J.* War: its causes, consequences, lawfulness, etc. Friends Peace Committee. Pp. 80.

*Elder, T. C.* The coming crash of peace, and Britain's mechanical renaissance. London: Simpkin. Pp. 149.

*Evans, Lawrence B.* Leading Cases on International Law. Chicago. Callaghan and Company.

*Farrow, Thomas, and Crotch, Walter.* The coming trade war. Chapman and Hall. Pp. 164.

(*Fauchille, Paul.*) Recueil de documents intéressant de droit international. Paris: A. Pedone. Pp. vii, 414.

*Finley, J.* Les Français au coeur de l'Amérique. Paris: Librairie Armand Colin.

*La Fontaine, Henri.* The great solution. Magnissima charta. Boston: World Peace Foundation. Pp. 177.

*Freehoff, Joseph C.* America and the canal title. New York: Sully and Kleinteich.

*Fried, Alfred H.* The restoration of Europe. New York: The Macmillan Company. Pp. 157.

*Garner, James W.* Some questions of international law in the European war. Nos. IX and X. Reprinted from the American Journal of International Law.

*Gay de Montellá, R.* Diez años de política internacional en el Mediterráneo, 1904–1914. Madrid: Fernando Fe. Pp. 242.

*Gentile, Mazzini Nunzio.* Libertà dei mari e cavi sottomarini. Messina: Aurora, G. Micale. Pp. 84.

*Guevara, L.* Towards reorganization of international finance. London: Simpkin. Pp. 86.

*Guiheneuc, Olivier.* Dreadnought ou submersible. Evreux: Paul Hérissey. Pp. 320.

*Gulick, Sidney L.* America and the Orient. New York: Missionary Education Movement. Pp. 100.

*Guyot, Yves.* The causes and consequences of the war. New York: Brentano's.

*Hearne, R. P.* Zeppelins and super-zeppelins. New York: The John Lane Company.

*Hobhouse, L. T.* Questions of war and peace. London: T. Fisher Unwin.

*Hornbeck, Stanley K.* Contemporary politics in the Far East. New York: D. Appleton and Company.

*Hovelaque, E.* The deeper causes of the war. New York: E. P. Dutton and Company.

*Huberich, C. H., and Nicol-Speyer, A., J. U. D., ed.* German legislation for the occupied territories of Belgium. Fourth series. The Hague: Martinus Nijhoff.

L'Italie et la guerre, d'aprés le témoignage de ses hommes d'État. Paris: Colin. Pp. xiii, 146.

*de Jehay, Comte Fr.* L'invasion du Grand-Duché de Luxembourg en août, 1914. Paris: Perrin. Pp. viii, 63.

*Jones, Chester Lloyd.* Caribbean interests of the United States. New York: D. Appleton and Company. Pp. 379.

*Lanchester, F. W.* Aircraft in warfare. New York: D. Appleton and Company.

*Macdonald, J. A. M.* European international relations. London: T. Fisher Unwin.

*von Mach, Edmund, ed.* Official diplomatic documents relating to the outbreak of the European war. New York: The Macmillan Company.

*Maugain, Gabriel.* L'opinion italienne et l'intervention de l'Italy dans la guerre actuelle. Paris: Édouard Champion. Pp. 105.

*Millard, Thomas F.* Our Eastern question. New York: The Century Company. Pp. 543.

*Montolín y de Togores, José de.* Los extranjeros ante la legislación español. Barcelona. Pp. 428.

*Naumann, F.* Central Europe. London: King and Son.

*Neilson, Francis.* How diplomats make war. Rev. ed. New York: B. W. Huebsch.

*Newbold, J. T. Walton.* How Europe armed for war. 1871–1914. London: Blackfriar's Press. Pp. 108.

*Nicholson, Soterios.* War or a united world. Washington, D. C.: Washington Publishing House.

*Des Ombiaux, Maurice.* France et Belgique. Paris: Bloud et Gay. Pp. 63.

Les origines diplomatiques de la guerre de 1870–1871. Paris: Gustave Ficker. Pp. 426.

*Persico, Clemente.* Di una nuova questione in tema di pagamenti internazionali. Milano: F. Vallardi.

*Phillipson, Coleman.* International law and the great war. New York: E. P. Dutton and Company. Pp. 407.

*Phillipson, Coleman.* Termination of war and treaties of peace. New York: E. P. Dutton and Company.

Pourparlers diplomatiques (2 avril 1914–6 avril 1915) XI. Nancy. Paris. Pp. 156.

*von Praag, L.* Jurisdiction et droit international public. La Haye: Belinfante frères.

*Quin, M.* The problems of human peace. London: T. Fisher Unwin.

*Reinach, Joseph.* La guerre de 1914–1915. Paris: Eugène Fasquelle. Pp. xi, 395.

*Rey, A. Augustin.* La question des Balkans devant l'Europe. 7e ed. Paris: Jules Meynial. Pp. 77.

*Ricci, Busatti Arturo.* La proposta del governo russo circa i prigionieri di guerra di nazionalità italiana. Roma: Athenaeum. Pp. 11.

*Rumeau, Mgr.* Le Pape et la guerre. Paris: P. Feron-Vrau. Pp. 23.

*Schuré, Edouard.* L'Alsace française. Tours: E. Arrault et Cie. Pp. 334.

*Schurman, Jacob Gould.* The Balkan Wars. 1912–1913. 3d ed. Princeton: Univ. Press.

*Scott, James Brown, ed.* Hague conventions and declarations of 1899 and 1907. 2d ed. Oxford: Clarendon Press.

*Scott, James Brown.* An international court of justice. New York: Oxford Univ. Press.

*Scott, J. W. R.* Japan, Great Britain and the world. Tokyo: Japan Advertiser.

*Skaggs, W. H.* German conspiracies in America. London: T. Fisher Unwin. Pp. xxviii, 332.

*Steed, Henry Wickham.* L'effort anglais. Paris: Colin. Pp. 40.

*Teissonnière, Paul.* La Belgique et le drame de 1914. Nîmes. Pp. 32.

*Toynbee, Arnold J.* The new Europe. New York: E. P. Dutton and Company. Pp. 85.

*Tyler, Royall,* ed. Calendar of letters, despatches and state papers relating to the negotiations between England and Spain. Vol. xi. London.

*Vattel, Emmerich* de. Le droit des gens; ou principes de la loi naturelle. 3 vols. v.3. trans. of ed. of 1758 by C. G. Fenwick. Washington: Carnegie Institute.

*Wallace, Edgar.* The war of the nations. Newnes. Pp. 308.

*Waxweiler, Emile.* Belgium and the great powers. New York: G. P. Putnam's Sons.

*Weyl, Walter E.* The great decision. New York: The Macmillan Company.

*Withers, Hartley.* International finance. New York: E. P. Dutton and Company. Pp. 186.

*Woolf, L. S.* International government. Two reports. New York: Brentano's. Pp. 412.

### *Articles*

**Argentine.** Republica argentina, ministerio de relaciones exteriores y culto . . . . documentos oficiales. Buenos-Aires: 1916.

**Blockades.** Legality of the blockades instituted by Napoleon's decrees and the British orders in council, 1806–1813. *Archibald H. Stockder.* Am. Jour. Int. Law. July, 1916.

——— The freedom of the seas. *H. Sidebotham.* Atlan. Mo. August, 1916.

**China.** The legitimate bounds of most-favored-nation treatment in China. *Kuo Yün-Kuan.* Chinese Soc. and Pol. Sci. Rev. April, 1916.

**Commerce.** A commercial league of defense. *Harold Cox.* Edinb. Rev. July, 1916.

——— La guerre commerciale sous-marine. *J. Perrinjaquet.* Rev. Gén de Droit Int. Pub. Mars-Aout, 1916.

——— Le commerce austro-allemand dans nos colonies. *Perreau-Pradier.* Rev. Pol. et. Parl. Juillet, 1916.

——— World struggle for shipping supremacy. *George Weiss.* Forum. Aug., 1916.

**Contraband.** The "Zamora" judgment. *Sir Francis Piggott.* Nine. Cent. July, 1916.

**East Africa.** British and German East Africa. *A. C. Yate.* Nine. Cent. Aug., 1916.

**Economic policy.** Les projets d'union economique entre les alliés dans l'hiver 1915–16. *E. B. Dubern.* Rev. des Sci. Pol. Juin, 1916.

——— La politique économique d'après guerre. Rev. Pol. et Parl. Août. 1916.

**Germany.** The hopelessness of Germany's position. *Politicus.* Fort. Rev. Aug., 1916.

**Greece.** Greece and the war. *H. Charles Woods.* Fort. Rev. Sept., 1916.

**International justice.** International justice. *James Scott Brown.* Penn. Law Rev. June, 1916.

**International Law.** Le droit public en temps de la guerre. *Joseph-Barthélemy.* Rev. du Droit et de la Sci. Pol. xxxiii[e], No. 2. 1916.

——— La guerre actuelle et le droit des gens. *A. Pillet.* Rev. Gén de Droit Int. Pub. Mars-Août, 1916.

——— Reconstruction of international law. *Franz von Liszt.* Penn. Law Rev. June, 1916.

——— Judicial decisions involving questions of international law. Am. Jour. Int. Law. July, 1916.

——— Public documents relating to international law. *George A. Finch.* Am. Jour. Int. Law. July, 1916.

——— International law and the law of the land. *W. E. Wilkinson.* Law. Mag. and Rev. August, 1916.

——— Une tentative française pour l'établissement d' un droit international ouvrier. *N. Krawtchenko.* Rev. Gén. de Droit Int. Pub. Mars-Août, 1916.

**Islam.** The disruption of Islam. *Duncan B. Macdonald.* Yale Rev. Oct., 1916.

**Italian Crisis.** La crise nationale italienne. *Stéphane Piot.* Rev. des Sci. Pol. Juin, 1916.

**Italy and England.** Popular Italian sentiment and the English alliance. *Thomas Okey.* Contemp. Rev. July, 1916.

**Japan.** Japan's part in the war. *Robert Machray.* Nine. Cent. Sept., 1916.

**Japan and America.** Japan and America. *Dr. Jokichi Takamine.* Forum. Aug., 1916.

**Mexico.** Last phases in Mexico. *Henry Lane Wilson.* Forum. Sept., 1916.

——— Our navy and Mexico. *Samuel Crowther.* Forum. Aug., 1916.

——— What is the matter with Mexico? *Sidney Austin Witherbee.* Forum. Sept., 1916.

**Migration.** Exode et immigration en Alsace-Lorraine. *P. Vidal de la Blache.* Rev. des Sci. Pol. Juin, 1916.

**Morocco.** La justice française au Maroc. *M. Berge.* Rev. gen. du droit, de la Legis. et de la Juris. Juin, 1916.

——— La nouvelle législation du protectorat français du Maroc. *Louis Renault.* Rev. des Sci. Pol. Juin, 1916.

**Naval Policy.** Our naval policy and position. *W. H. Henderson.* Contemp. Rev. July, 1916.

**Neutrality.** Ignominious neutrality. *Philip Marshall Brown.* N. Am. Rev. August, 1916.

——— Neutrality and the sale of arms. *Charles Noble Gregory.* Am. Jour. Int. Law. July, 1916.

——— Neutrality in Northern Europe. *Rt. Rev. Herbert Bury.* Nine. Cent. July, 1916.

**Nicaragua.** A treaty in chancery. *George Harvey.* N. Am. Rev. Aug., 1916.

**Pangermanism.** Les pangermanistes et la guerre. *Pierre Rain.* Rev. des Sci. Pol. Juin, 1916.

**Persia.** Persia and the frustration of German schemes. *Robert Machray.* Fort. Rev. July, 1916.

**Prizes.** Jurisprudence en matière de prises maritimes. Rev. Gén. de Droit Int. Pub. Mars-Août, 1916.

**Requisition of Ships.** La requisition des navires allemands en Portugal. *J. Barsdevant.* Rev. Gén. de Droit Int. Pub. Mars-Août, 1916.

**Roumania.** The Roumanian factor in the problem of the Near East. *J. A. R. Marriott.* Edinb. Rev. July, 1916.

**Switzerland.** Switzerland and the war. *Sir Jacob Preston.* Contemp. Rev. Sept., 1916.

——— Switzerland's part. *Marie-Marguérite Fréchette.* Atlan. Mo. July, 1916.

Thinking internationally. *Rt. Hon. The Earl of Cromer.* Nine. Cent. July, 1916.

**United States.** America's part in the great war. *George Stanley.* Forum. Aug., 1916.

——— American perplexities. *James Davenport Whelpley.* Fort. Rev. Aug., 1916.

——— "Kultur" in American politics. *Frank Perry Olds.* Atlan. Mo. Sept., 1916.

——— Our relations with Great Britain. *Arthur Bullard.* Atlan. Mo. Oct., 1916.

——— President Wilson's administration of foreign affairs. *David Jayne Hill.* N. Am. Rev. Sept., 1916.

——— Washington and entangling alliances. *Roland G. Usher.* N. Am. Rev. July, 1916.

**War.** Documents sur la guerre de 1914. Rev. Gén. de Droit Int. Pub. Mars-Août, 1916.

——— Violation systématique des lois de la guerre par les Austro-Allemands. *P. Pic.* Rev. Gén. de Droit Int. Pub. Mars-Août, 1916.

**War Finances.** Dépenses de guerre et coût de la guerre. *G. Pradelle, A Camille, et C. Gide.* La Paix par Le Droit. Juin, 1916.

## JURISPRUDENCE

### *Books*

*D'Alessio, Francesco.* L'elemento guiridico nella scienza della finanza. Milano: Società editrice libraria. Pp. 14.

*von Bar, Karl Ludwig and others.* A history of continental criminal law. Tr. by T. S. Bell and others. New York: J. B. Lippincott Company. Pp. 617.

*Bastid, Paul.* De la fonction sociale des communautés taisibles de l'ancien droit. Tours: Paul Salmon. Pp. 223.

*Colin, Ambroise et Capitant, H.* Cours élémentaire de droit civil francais. Paris: Dalloz. Pp. xvii, 1088.

*Cruzado, Sanz, Felix.* Legislaciòn y jurisprudencia de aguas. . . . . Madrid: Fernando Fe. Pp. 670.

*Dalloz.* Répertoire pratique de législation, de doctrine et de jurisprudence. Paris: Dalloz. Pp. 985.

*Davies, J. E.* Trust laws and unfair competition. Washington, D. C.: Government Printing Office.

Le droit pendant la guerre. Paris: Marchal et Godde. Pp. viii, 216.

*Farwell, Rt. Hon. Sir G.* Concise treatise of powers. 3d ed. London: Stevens and Sons. Pp. 767.

*Garrand, D.* Traité théorique et pratique du droit pénal français. 3e ed. Mayenne: C. Colin. Pp. 729.

*Harispe, Hippolyte tr.* Projet de code pénal pour la République Argentine . . . . Laval: E. Barnéoud et Cie. Pp. 157.

*King, H. H., ed.* Butterworth's Twentieth century statutes. Vol. xi. Pp. xxxiv, 370.

*Medina, Leon y Marañon, Manuel.* Leyes civiles de España. Madrid: Est. Tip. de los Hijos de Tello.

Oxford studies in social and legal history. Vol. 5. Oxford: Clarendon Press. Pp. 142.

*Palmer, Thomas W.* Guide to the law and legal literature of Spain. Washington: Government Printing Office.

*Odriozola y Grimaud, Carlos de.* Diccionario de jurisprudencia hipotecaria de España. Madrid: Hijos de Reus. Pp. 870.

*Thaller, E.* Traité élémentaire de droit commercial à l'exclusion du droit maritime. 5e ed. Paris: Rousseau et Cie. Pp. 1164.

*Wigley, F. G., ed.* Bengal Code, containing the regulations, ordinance and local acts . . . . in Bengal. 4th ed. Pp. 991.

### *Articles*

**Criminal Law.** Legislative and judicial tendencies in the field of criminal law. *Chester G. Vernier.* Ill. Law Rev. June, 1916.

**England.** The office of the Lord Chief Justice of England. *Sir Edward Brabrook.* Fort. Rev. Sept., 1916.

**Jurisprudence.** La jurisprudence administrative sur les dommages résultant des travaux publics et son application aux dommages de guerre. *Leon Michoud.* Rev. du Droit Pub. et de la Sci. Pol., xxxiiie, No. 2, 1916.

**Reform.** Le projet de reforme judiciaire. *Albert Tissier.* Rev. Pol. et Parl. Juin, 1916.

**War Crimes.** War crimes, their prevention and punishment. *Hugh H. L. Bellot.* Nine. Cent. Sept., 1916.

## LOCAL GOVERNMENT

### *Books*

*du Chapois, F. Drion.* Le droit communal belge. Heyst sur Mer: Alfred Tytgat. Pp. 430.

*Christy, A. G.* The municipally-operated electrical utilities of Western Canada.

*Clarke, J. J.* Outlines of English local government. Liverpool: Bookseller's Company. Pp. 40.

*Dawson, William Harbutt.* Municipal life and government in Germany. 2d ed. New York: Longmans Green and Company. Pp. 394.

*Munro, William Bennett.* The government of American cities. New and rev. ed. New York: The Macmillan Company. Pp. 10, 400.

*Roberts, Kate Louise.* The city beautiful, a study of town planning and municipal art. White Plains, N. Y.: H. W. Wilson Company.

*Scholefeld, Joshua, ed.* Encyclopedia of local government law. New York: N. A. Phemister Company. 1916. 13 volumes.

*Stowe, J. Albert.* The voter in Command. Newark. Pp. 62.

### *Articles*

**City Plans.** Recent city plan reports. *Charles Mulford Robinson.* Nat'l Mun. Rev. July–Oct., 1916.

**Civil Service.** Progress in municipal civil service. *F. W. Coker.* Nat'l Mun. Rev. Oct., 1916.

**Education.** The Gary system. *Ide G. Sargent.* Forum. September, 1916.

——— Instruction in municipal government in the universities and colleges of the United States. *William Bennett Munro.* Nat'l Mun. Rev. Oct., 1916.

——— Municipal universities of the United States. *John L. Paterson.* Nat'l Mun. Rev. Oct., 1916.

**Elections.** A new sytem of elections for St. Louis. *Percy Werner.* Nat'l Mun. Rev. October, 1916.

——— Bi-partisanship and vote manipulation in Detroit. *Arthur C. Millspaugh.* Nat'l Mun. Rev. Oct., 1916.

——— Election reforms. *Clinton Rogers Woodruff.* Nat'l Mun. Rev. Oct., 1916.

**France.** French cities in war time. *Georges Benoit-Levy.* Nat'l Mun. Rev. Oct., 1916.

**Legal Decisions.** Legal decisions affecting municipalities. *Compiled by L. H. Sweet.* The Am. City. Sept., 1916.

——— The courts and excess condemnation. *Charles Reitell.* The Am. City. Sept., 1916.

**Liquor Question and Reform.** The liquor question and municipal reform. *George C. Sikes.* Nat'l Mun. Rev. July, 1916.

**Local Option.** Local option in the United States. *Philip A. Boyer.* Nat'l Mun. Rev. Oct., 1916.

**Municipal Bonds.** Municipal bonds over the counter and in small denominations. *Arthur B. Chapin.* Nat'l Mun. Rev. Oct., 1916.

**Municipal Court.** The municipal court of Cleveland. *Raymond Moley.* Nat'l Mun. Rev. July, 1916.

**Municipal Research Bureau.** The Philadelphia bureau of municipal research. *George Burnham, Jr.* Nat'l Mun. Rev. July, 1916.

**Social Survey.** Progress of the civic and social survey idea. *Murray Gross.* Nat'l Mun. Rev. July, 1916.

**Statistics.** A new census report of municipal statistics. The Am. City. Sept., 1916.

**War and Local Administration.** L'administration locale et la guerre. *Louis Rolland.* Rev. du Droit et de la Sci. Pol., xxxiii[e], No. 2. 1916.

## POLITICAL THEORY AND MISCELLANEOUS

*Angell, Norman.* The dangers of half-preparedness. New York: G. P. Putnam's Sons. Pp. 129.

*Barker, J. Ellis.* The foundations of Germany. Smith, Elder. Pp. 288.

*Bechhofer, C. E* Russia at the crossroads. New York: E. P. Dutton and Company.

*Beck, James M.* The war and humanity. New York: G. P. Putnam's Sons.

*Boubée, Joseph.* La Belgique loyale, heroïque et malheureuse. Paris: Plon-Nourrit et C[ie]. Pp. viii, 252.

*Boutroux, E.* L'idée di liberté en France et en Allemagne. Paris: Editions de Foi et Vie.

*Brooks, Eugene Clyde.* Woodrow Wilson as President. Chicago: Row, Peterson and Company. Pp. 572.

*Brown, Harry G.* Transportation rates and their regulation. New York: The Macmillan Company.

*Carlyle, R. W. and Carlyle, A. J.* History of mediaeval political theory in the West. v. 3. New York: G. P. Putnam's Sons. Pp. 218.

*Creel, G.* Wilson and the issues. New York: The Century Company.

*Creighton, L. and others.* The international crisis: The theory of the state. New York: Oxford University Press.

*De Souza, Count Charles.* Germany in defeat. New York: E. P. Dutton and Company. Pp. 232.

*Gaultier, Paul.* La mentalité allemande et la guerre. Paris: Alcan.

*Gill, Conrad.* National power and prosperity. London: T. Fisher Unwin.

*González Blanco, Edmundo.* Carranza y la revolución de Mexico. 2 ed. Madrid: Helénica. Pp. 590.

*Hagar, George J.* Plain facts about Mexico. Harper and Brothers. Pp. 80.

*Hayes, Carlton J. H.* A political and social history of modern Europe. New York: The Macmillan Company. 2 vols. Pp. 598, 726.

*Hughes, Thomas J.* State socialism after the war—what it is—how it works. Philadelphia: George W. Jacobs and Company.

*Kerrick, Capt. H. S., U. S. A.* Military and naval America. New York: Doubleday, Page and Company.

*Krehbiel, E.* Nationalism, war and society. New York: The Macmillan Company.

*Lajpat, Rouja.* Young India. New York: Huebsch. Pp. 301.

*Lapp, John A.* Our America. The Elements of Civics. Indianapolis: Bobbs Merrill Co. Pp. 399.

*Lévy, R. G.* Banques d'emission et trésors publics. 2d ed. Paris: Hachette.

*McLaren, W. W.* A political history of Japan during the Meija Era, 1867–1912. New York: Charles Scribner's Sons. Pp. 380.

*Maillard, Charles.* Le socialisme et la reconstitution intégrale de la France. Paris: Levé. Pp. 103.

*de Medelsheim, G. Cerfberr.* Le Nerf de la guerre. Les ressources de la defense nationale. Nancy-Paris: Berger-Levrault. Pp. 171.

*Mont, Jules.* La défense nationale et notre parlement. Paris: Perrin et C^ie^ Pp. 288.

*Noyes, Alexander Dana.* Financial chapters in the war. New York: Charles Scribner's Sons.

L'Origine allemande de l'anticléricalisme en France. Orléans: Auguste Gout et C^ie^. Pp. 12.

*Orrier, Ch.* Les leçons économiques de la guerre. Paris: H. Dunod et E. Pinat. Pp. 131.

*Ransom, William L.* Charles Hughes: The statesman as shown in the opinions of the jurist. New York: E. P. Dutton and Company. Pp. 352.

*Reulos, Alexandre.* Manuel des séquestres. Paris: La Société du Recueil. Sirey. Pp. 550.

*Rose, J. Holland.* Nationality in modern history. New York: The Macmillan Company.

*Santo, J.* Les méfaits de l'anticléricalisme pendant la guerre. Orléans: Auguste Gout et C^ie^. Pp. 28.

*Simpson, J. Y.* The self-discovery of Russia. New York: George H. Doran Company.

*Ward, A. W.* Germany 1815–1890. Vol. I 1815–1852. Cambridge Historical series. Cambridge: University Press. Pp. xiv, 591.

*Webb, Sidney.* Towards social democracy? London: Allen and Unwin. Pp. 48.

*Wyzewa, Teodor de.* La nouvelle Allemagne. Paris: Perrin et C^ie^. Pp. 317.

*Young, Arthur Nichols.* The single tax movement in the United States. Princeton, N. J.: Princeton University Press.

*Zolla, Daniel.* La situation financière après vingtdeux mois de guerre. Chalon-sur-Saône: E. Bertrand. Pp. 12.

*Articles*

**Alcoholism.** Alcohol and crime. *Robert Blackwood.* Forum. August, 1916.

**Citizenship.** Training in the schools for civic efficiency. *J. Lynn Barnard.* Am. Acad. of Pol. and Soc. Sci. Sept., 1916.

**Danish Islands.** The story of the Danish Islands. *Willis Fletcher Johnson.* N. Am. Rev. Sept., 1916.

**Democracy.** Current theories of democracy. *W. H. Mallock.* Nine. Cent. Aug., 1916.

——— Has America gone too far in democracy? *W. R. Boyd.* N. Am. Rev. July, 1916.

——— Democratic control of foreign policy. *G. Lowes Dickinson.* Atlan. Mo. Aug., 1916.

**Democratic Party.** The achievements of the Democratic party. *Charles W. Eliot.* Atlan. Mo. Oct., 1916.

**Finances.** Germany's financial position. *H. J. Jennings.* N. Am. Rev. July, 1916.

**Initiative and Referendum.** Safeguarding the petition in the initiative and referendum. *F. W. Coker.* Am. Pol. Sci. Rev. Aug., 1916.

——— Proper safeguards for the initiative and referendum. *W. A. Schnader.* Am. Pol. Sci. Rev. Aug., 1916.

——— Recent experience with the initiative and referendum. *Robert E. Cushman.* Am. Pol. Sci. Rev. Aug., 1916.

**Ireland.** Sinn Fein. Edinb. Rev. July, 1916.

——— Ways out of the Irish labyrinth. *D. C. Lathbury.* Nine. Cent. July, 1916.

——— The Irish insurrection. *Sidney Brooks.* N. Am. Rev. July, 1916.

——— Sir Roger Casement and Sinn Fein. *H. W. Nevinson.* Atlan. Mo. Aug., 1916.

——— The Irish problem. *Sir W. F. Barrett.* Contemp. Rev. Aug., 1916.

——— Ireland and the Ministerial changes. *Auditor Tantum.* Fort. Rev. Aug., 1916.

——— Is there a way out of the chaos in Ireland? *William O'Brien.* Nine. Cent. Sept., 1916.

**Judiciary.** Giving political orders to the judiciary. *J. H. W.* Ill. Law Rev. June, 1916.

**Labor Problems.** Labor problems after the war. *A. C. Pigou.* Contemp. Rev. Sept., 1916.

——— Labor and the railroads. *George Weiss.* Forum. Sept., 1916.

**Land Holdings.** The anti-small holdings mania. *Christopher Turnor.* Nine. Cent. Sept., 1916.

**Merchant Marine.** A federal merchant marine. *Paul Revere Frothingham.* Atlan. Mo. Aug., 1916.

**Military Preparedness.** Continental democracies and compulsory military service. *G. G. Coulton.* Fort. Rev. July, 1916.

——— Unpreparedness demonstrated. *George Harvey.* N. Am. Rev. Aug., 1916.

**National Conventions.** National conventions. *George Harvey.* N. Am. Rev. July, 1916.

**Poland.** L'autonomie economique de la Pologne. *Stanislaus Posner.* Rev. Pol. et Parl. Août, 1916.

**Prisons.** Sing Sing: An evolution. *Frank Marshall White.* Atlan. Mo. Sept., 1916.

# INDEX

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